

## City of San José and International Association of Firefighters, Local 230 Union Contract

The March 1, 2004 – June 30, 2009 Union Contract between the City of San José and International Association of Firefighters, Local 230 was the result of an Arbitration Award issued on August 3, 2007.

The following Union Contract is a draft that incorporates the terms of the Arbitration Award, which can be viewed online at [www.sanjoseca.gov/employeerelations/moas/arb\\_iaff.pdf](http://www.sanjoseca.gov/employeerelations/moas/arb_iaff.pdf)

The International Association of Firefighters, Local 230 has not approved the contract.

# **Memorandum of Agreement**

**City of San José**

**and**

**International Association of Firefighters**

**Local 230**



**March 1, 2004 - June 30, 2009**

**INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 230**  
**MEMORANDUM OF AGREEMENT**  
**March 1, 2004 – June 30, 2009**

**TABLE OF CONTENTS**

Article 1	Term .....	1
Article 2	Recognition.....	1
Article 3	Purpose .....	2
Article 4	Definition.....	2
Article 5	Wages and Special Pay.....	3
Article 6	Insurance Benefits .....	7
Article 7	Educational and Professional Incentives.....	10
Article 8	Uniform Allowance .....	11
Article 9	Working in A Higher Classification .....	12
Article 10	Call Back Pay and Standby Pay.....	12
Article 11	Witness Leave .....	13
Article 12	Jury Duty .....	13
Article 13	Use of Private Automobile.....	14
Article 14	Hours of Work and Overtime.....	14
Article 15	Dues Deduction .....	17
Article 16	Management Rights.....	17
Article 17	Full Understanding, Modification and Waiver .....	19
Article 18	Concerted Activity .....	20
Article 19	Safety .....	20
Article 20	Grievance Procedure .....	21
Article 21	Leaves of Absence .....	27
Article 22	Layoff.....	28
Article 23	Bulletin Boards.....	30
Article 24	Holiday Benefits .....	31
Article 25	Vacations .....	32
Article 26	Sick Leave .....	34
Article 27	Disability Leave.....	38
Article 28	Retirement .....	40
Article 29	Miscellaneous .....	42

29.1	Pay Checks .....	42
29.2	Door Locks .....	42
29.3	Voter Registration and Bicycle Licensing .....	42
29.4	Television Training .....	42
29.6	Copies Of Agreement for Distribution .....	42
Article 30	Maintenance of Membership .....	42
Article 31	Bereavement Leave .....	43
Article 32	Authorized Representatives .....	43
Article 33	Minimum Staffing .....	44
Article 34	Return to Work.....	45
Article 35	Employee Rights.....	46
Article 36	Recruit Classification .....	47
Article 37	Labor Management Committee.....	47
Article 38	Promotional Examinations .....	48
Article 39	Use of Tobacco.....	52
Article 40	Substance Abuse Policy .....	52
Article 41	Employee Assistance Program .....	53
Article 42	Civilianization of Functions.....	53
Article 43	Modified Duty .....	53
Article 44	Separability .....	53
Article 45	Nondiscrimination .....	53
Article 46	Catastrophic Illness Time Donation.....	54
Article 47	Meet and Confer Process and Mediation .....	55
Article 48	Paramedics.....	55

## **EXHIBITS**

Exhibit I	Salary Schedule Effective July 3, 2005
Exhibit II	Salary Schedule Effective July 2, 2006
Exhibit III	Salary Schedule Effective July 1, 2007
Exhibit IV	Salary Schedule Effective June 29, 2008
Exhibit V	Personnel Administrative Manual, Section 8.01 – General Education Reimbursement  Personnel Administrative Manual, Section 8.06 - Special Professional and Educational Incentives
Exhibit VI	City Policy Manual Section 1.4.2, Substance Abuse Program & Policy

## **Memorandum of Agreement**

### **Between City of San José and International Association of Firefighters, Local 230**

**March 1, 2004 – June 30, 2009**

This Memorandum of Agreement hereinafter referred to as the "Agreement" is made and entered into at San José, California, this **August 11, 2007**, as a result and in part of the Opinion and Award in Interest Arbitration, between the City of San José, hereinafter referred to as the "City" or "Management" and the International Association of Firefighters, Local #230, hereinafter referred to as the "Union." The use of the term "Memorandum of Agreement" or "Agreement" is to be considered the same as the term Memorandum of Understanding contained in Section 3505.1 of the "Meyers-Milias-Brown Act."

#### **ARTICLE 1 TERM**

- 1.1 This Agreement shall become effective March 1, 2004, except where otherwise provided, and shall remain in effect through June 30, 2009. No amendment or change to the provisions of this Agreement shall be valid or binding unless reduced to writing and signed by duly authorized representative(s) of the parties.
- 1.2 It is the mutual desire of the parties to conclude the meet and confer process as early as possible prior to the expiration of this Agreement. Therefore, prior to April 1 preceding the expiration of this Agreement, each party will furnish the other with a list of the issues it wishes to raise in the meet and confer process.
- 1.3 The City agrees to begin the meet and confer process as soon thereafter as is reasonably possible.

#### **ARTICLE 2 RECOGNITION**

- 2.1 Pursuant to Resolution #39367 of the City Council of the City of San José and the provisions of applicable state law, the International Association of Firefighters, Local #230, hereinafter referred to as the "Union", is recognized as the exclusive representative for the purpose of meeting and conferring on matters within the scope of representation for employees assigned to the classifications listed in "Exhibit I" attached and incorporated by reference into this Agreement, otherwise known as Unit Two (2). The classifications listed in "Exhibit I" and subsequent additions thereto or deletions there from shall constitute an appropriate unit.
- 2.2 No petition for modification of, or petition for recognition for, the existing representation Unit Two (2), or modification of such unit, shall occur during the term of this Agreement, Except: (1) where an applicable State or Federal law requires such modification, or (2) pursuant to the provisions of the Employer-Employee Relations Resolution #39367, as

amended, but only during the period specifically set forth in the Memorandum of Agreement.

- 2.3 Although the City reserves the right to establish new classifications, transfer employees, assign work and exercise other management rights, the parties agree that they will meet and confer if any such City action materially reduces existing bargaining unit work and, if no agreement is reached, will pursue the remedies provided under the San José City Charter Section 1111.
- 2.4 The City agrees to meet and confer with the Union prior to contracting out work currently performed by bargaining unit members whenever such contracting out would result in material reduction of work done by bargaining unit members or would have significant adverse impact on bargaining unit work. This provision shall not apply to the following:
- a) Station 20 (Airport) which the City agrees will not be contracted out during the term of this agreement; or,
  - b) authority previously granted to City under this Agreement for Civilianization of Functions, which may be exercised by the City without further meeting and conferring.

### **ARTICLE 3 PURPOSE**

The parties agree that the purpose of this Memorandum of Agreement is: To promote and provide harmonious relations, cooperation and understanding between the City and the employees covered herein; to provide an orderly and equitable means of resolving differences which may arise under this Agreement, and to set forth the full agreements of the parties reached as a result of meeting and conferring in good faith regarding wages, hours and other terms and conditions of employment of the employees represented by the International Association of Firefighters, Local # 230.

- 3.1 Whenever a male gender is used in this Agreement it shall be construed to include male and female employees except where inappropriate to do so.

### **ARTICLE 4 DEFINITION**

For the purposes of this Memorandum of Agreement, words, phrases and terms used herein shall be deemed to have the meanings specified in Section 2, Definitions, of Resolution No. 39367 of the Council of the City of San José and in Part 2, Definitions of Chapter 3.04 of Title III of the San José Municipal Code unless it is apparent from the text that a different meaning is intended.

## ARTICLE 5 WAGES AND SPECIAL PAY

### 5.1 Wages and Special Adjustments

Effective July 3, 2005, all persons represented by the IAFF shall receive a wage increase of 1.50%.

Effective July 2, 2006, all persons represented by the IAFF shall receive a wage increase of 5.70%.

Effective July 1, 2007, all persons represented by the IAFF shall receive a wage increase of 5.70%.

Effective June 29, 2008, all persons represented by the IAFF shall receive a wage increase of 3.75%.

Any general wage increase during the term of the MOA will be reduced by the cost of any additional premium pay for Special Operations effective on or after the first pay period of that fiscal year.

The wage increases are approximate in accordance with current City of San José payroll tables. Salary ranges are attached hereto as "Exhibits I, II, III, and IV".

5.1.1 Terrorism/Anti-Terrorism Pay. Effective July 1, 2006, all persons represented by the IAFF shall receive a wage increase of 2.0% for anti-terrorism training. This shall be pensionable.

### 5.2 Special Operations.

5.2.1 All employees assigned to the Hazardous Incident Team (HIT) program shall be paid an amount equivalent to a one (1) step increase under the biweekly pay plan, or approximately five percent (5.0%) during each biweekly pay period of such assignment.

5.2.2 Relief personnel who are assigned to the HIT Unit during the absence of regularly assigned unit members shall be paid \$15.00 for such assignment during which four (4) or more consecutive hours are worked.

5.2.3 Prior to July 1, 2008, the City will provide Local 230 with the EOPP Section covering the HIT Program amended to include the following:

- Skill-based bidding whereby employees with higher levels of skill and/or training applicable to the HIT Program will have priority in bidding into the Program and seniority will be used as a tiebreaker;
- A requirement that any individual assigned to the HIT Program will remain with the HIT Program for a period of three (3) years following the completion of any minimum skill and certification requirements;

- A requirement that all personnel assigned to the HIT Program will maintain and annually demonstrate required skills and complete any mandatory continuing education; and
- A restriction limiting shift trades and relief assignments for personnel assigned to the HIT Unit to other employees assigned to the Program or with qualified relief pool members who had completed the minimum skill and certification requirements.

The Department will adopt the revised EOPP effective July 1, 2008.

5.2.4 Effective the beginning of the first payroll pay period after the final adopted of the revised EOPP covering the HIT Program, qualified relief personnel who are assigned to the HIT Unit during the absence of regularly assigned unit members shall be paid \$25.00 for such assignment during which four (4) or more consecutive hours are worked.

5.2.5 On or about January 1, 2008, the City will provide Local 230 with a draft EOPP describing the USAR Program. This draft policy will contain the following:

- Skill-based bidding whereby employees with higher levels of skill and/or training applicable to the USAR Program will have priority in bidding into the Program and seniority will be used as a tiebreaker.
- A requirement that any individual assigned to the USAR Program will remain with that Company for a period of three (3) years following the completion of any minimum skill and certification requirements.
- A requirement that all personnel assigned to the USAR Program will maintain and annually demonstrate required skills and complete any mandatory continuing education; and
- A restriction limiting shift trades and relief assignments for personnel assigned to a USAR Company to other employees assigned to the USAR Program or with qualified relief pool members who have completed the minimum skill and certification requirements.

Local 230 will review and comment on the draft EOPP describing the USAR program and may request bargaining over any matters within the scope of representation (not including items enumerated in this section) on or before March 1, 2008.

5.2.6 Effective the later of July 1, 2008 or the beginning of the first payroll pay period after the parties reach agreement on the EOPP describing the USAR program, all employees assigned to a USAR Company shall be paid an amount equivalent to a one (1) step increase under the biweekly pay plan, or approximately five percent (5.0%) during each biweekly pay period of such assignment.

- 5.2.7 Effective the later of July 1, 2008, or the beginning of the first payroll pay period after the parties reach agreement on the EOPP describing the USAR program, qualified relief personnel who are assigned to a USAR Company during the absence of regularly assigned unit members shall be paid \$25.00 for such assignment during which four (4) or more consecutive hours are worked.
- 5.2.8 Any general wage adjustment effective on or after June 29, 2008 shall be reduced by the cost of any increased premium pay for Special Operations.
- 5.2.9 Any negotiations over the development of policies pursuant to section 5.2 or any subsection therefore, shall not be subject to arbitration under Charter Section 1111 or any other provision of the MOA.
- 5.3 Emergency Medical Technician (EMT). Each employee who qualifies for certification by Santa Clara County as an Emergency Medical Technician (EMT-NA or EMT-D Non Ambulance or Defibrillation) shall be paid an amount equal to three percent (3.0%) of top step firefighter base biweekly pay for each pay period in which the employee is entitled to receive a salary, commencing with the first full pay period after the Fire Chief files with the Director of Finance a statement that the employee qualifies for such certification.
- 5.3.1 Employees will be required to obtain and maintain certification as an Emergency Medical Technician. The City will continue to provide training.
- 5.4 Paramedics. Each employee licensed by the State of California, accredited by the County of Santa Clara and assigned to front line or support paramedic duty as a paramedic shall be eligible for paramedic premium pay.
- 5.4.1 Paramedic premium pay for front line paramedics shall be an amount equal to eleven and one-half percent (11.5%) of top step firefighter base biweekly pay for each pay period in which the employee is entitled to receive a salary. Beginning in pay period 19 of 1996 (August 25, 1996), paramedic premium pay for front line paramedics shall be an amount equal to twelve percent (12%) of top step firefighter base biweekly pay for each pay period in which the employee is entitled to receive a salary.
- 5.4.2 Paramedic premium pay for support paramedics shall be an amount equal to eight percent (8.0%) of top step firefighter base biweekly pay for each pay period in which the employee is entitled to receive a salary. Effective May 1, 2007, employees who are newly designated as support paramedics shall receive paramedic premium pay in an amount equal to five percent (5%) of top step firefighter base biweekly pay for each pay period in which the employee is entitled to receive a salary. Employees previously designated as support paramedics shall have their paramedic premium pay frozen and "Y-rated" and shall continue to receive that amount as paramedic premium pay until such time as that amount is either less than or equals five percent (5%) of top step firefighter base biweekly pay in which event that support paramedic shall continue thereafter to receive as paramedic premium pay an amount equal to five percent (5%) of top step firefighter base biweekly pay for each pay period in which the employee is entitled to receive a salary.

- 5.4.2.1 The City may assign up to a maximum of one-hundred forty-seven (147) support paramedics. If a support paramedic fails to complete the required number of patient contact reports in any given calendar quarter, he or she shall not receive Support Paramedic premium pay until the beginning of the first payroll pay period after he or she completes at least three (3) patient contact reports in a calendar quarter.
- 5.4.3 Paramedic premium pay shall commence with the first full pay period following meeting all of the requirements in section 5.4 above. However, if all requirements are met on the first Sunday or Monday of a pay period, premium pay will begin in that pay period.
- 5.4.4 Paramedic premium pay shall not be considered "compensation" for the purpose of computing retirement benefits in accordance with the provisions of Section 3.36.020(C) of the City of San José Municipal Code. The Union agrees not to propose that paramedic premium pay be included in the definition of "compensation" in the 1996 Police & Fire Retirement Plan negotiations or the 1996 MOA negotiations.
- 5.4.5 If the performance or behavior of a front-line or support paramedic is under investigation by the Fire Department or City Medical Director, the employee shall be removed from paramedic duties during the investigation, however, paramedic premium pay will not be suspended until the investigation is complete. If the investigation results in findings of misconduct, the employee will be removed from the paramedic program. Paramedic premium pay will immediately cease, and premium pay paid from the date the employee was unassigned from the City's paramedic program will be collected from the employee.
- 5.4.6 The Department reserves the right to assign up to one Support Paramedic position to each Company on each shift. The Support Paramedic position will be reserved for the most senior Support Paramedic that bids on a Company where no support paramedic exists on that Company. This process will normally be completed through attrition. However, the Fire Chief retains the right to reassign for the good of the department.

If no Support Paramedic bids for an open Support Paramedic position, the least senior relief Support Paramedic will be assigned to that position.

- 5.5 Accommodation for Displaced Firefighters Due to Paramedic Program. A one (1) time flat payment of \$500.00 shall be given to each firefighter who is displaced from their engine company due to the expansion of the City's paramedic program.
- 5.5.1 The one (1) time special accommodation payment shall be made after the paramedic program is fully implemented in July 1996. This one (1) time payment shall not establish a precedent for future shift bids.
- 5.5.2 Firefighters who are displaced, but agree to a mutual trade back to their original engine company within one (1) year of displacement, are not eligible for the special accommodation payment.

- 5.5.3 The City shall recover the \$500.00 payment from firefighters who receive the special accommodation payment, but become ineligible under the conditions in sections 5.5.2 above.
- 5.5.4 In accordance with the provisions of Article 5.5 and sections 5.5.1, 5.5.2, and 5.5.3 above, the City shall extend the one (1) time flat payment of \$500.00 to each firefighter who is displaced from their truck or USAR company due to the continued expansion of the City's paramedic program. This section does not preclude the City from suspending bidding for firefighter positions on the affected truck or USAR company prior to upgrading the company to paramedic level.
- 5.6 Administrative Assignment Incentive Pay. The City and Union acknowledge that certain employees represented by the Union are needed to staff forty (40) hour per week assignments and that, while assigned to such duties, these employees are limited in their ability to work Minimum Staffing, are not eligible for FLSA overtime based on their regular work schedule and do not receive the work schedule advantages afforded to those employees on twenty four (24) hour shift assignments. Therefore, the City agrees to provide Administrative Assignment Incentive Pay in the amount of \$36.00 per pay period to those employees assigned to forty (40) hour per week positions.
- 5.7 Bilingual Premium Pay.
- 5.7.1 Effective June 25, 2000, each full time employee certified Spanish-English or Vietnamese-English bilingual shall be compensated at the rate of \$29.00 per pay period, if he or she meets the following criteria:
- 5.7.1.1 The employee is certified in English and another language by the Fire Chief and;
- 5.7.1.2 The employee's duties require the use of the designated language on a regular basis.
- 5.7.2 The Department of Human Resources or its designee must certify such employees bilingual.
- 5.7.3 If the Fire Chief determines another Non-English language is required in the department, the Fire Chief may recommend that the language be eligible for the bilingual premium pay to the Director of Human Resources. Eligibility and certification of an additional Non-English language shall be in accordance with the above criteria.

## **ARTICLE 6 INSURANCE BENEFITS**

- 6.1 Health Insurance Coverage.
- 6.1.1 Eligible employees may elect health insurance coverage under one (1) of the plans for employee only or for employee and dependents.

- 6.1.2 The City will pay ninety percent (90%) of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage, and the employee will pay ten percent (10%) of the premium of the lowest cost plan up to a maximum of \$25.00 per month. Any additional amount above the cost of the lowest priced plan, less \$25.00 per month, required for the premium of any plan other than the lowest priced plan shall be paid by the employee.
- 6.1.3 Effective January 1, 2007, the City will pay ninety (90%) percent of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage and the employee will pay ten (10%) percent of the premium of the lowest cost plan up to a maximum of \$100.00 per month. Any additional amount above the cost of the lowest priced plan, less \$100.00 per month, required for the premium of any plan other than the lowest priced plan shall be paid by the employee.
- 6.1.4 Effective January 1, 2008, the City will pay ninety (90%) percent of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage and the employee will pay ten (10%) percent of the premium of the lowest cost plan up to a maximum of \$150.00 per month. Any additional amount above the cost of the lowest priced plan, less \$150.00 per month, required for the premium of any plan other than the lowest priced plan shall be paid by the employee.
- 6.1.5 Effective January 1, 2008, co-pays for all available HMO plans shall be as follows:
- a) Office Visit Co-pay shall be increased to \$10.
  - b) Prescription Co-pay shall be increased to \$5 for generic and \$10 for brand name.
  - c) Emergency Room Co-pay shall be increased to \$50.

## 6.2 Dental Insurance.

- 6.2.1 The City will provide the dental insurance coverage for eligible full-time employees and their dependents in accordance with one (1) of the two (2) available plans. As of the effective date of this agreement, the plans include an indemnity plan, administered by Delta Dental, and a prepaid plan, insured through Dental Benefit Providers. The dental program provided shall include an option for either prepaid or indemnity coverage. The City shall pay whatever cost increases are incurred during the term of this Agreement for any improvements in dental and orthodontia coverage resulting from these discussions.
- 6.2.1.1 Effective January 1, 2001, each eligible full-time employee and dependents shall receive a lifetime maximum of \$2,000 orthodontia coverage in the Delta Dental Plan.
- 6.2.1.2 Effective the term of this agreement, all active, eligible full-time employees and their dependents shall receive a lifetime maximum of \$2,000 per eligible full-time employee and their dependents for

orthodontic coverage and a maximum for dental of \$1,500 per calendar year.

6.2.1.3 Effective January 1, 2007, the City will provide dental coverage in the lowest priced plan for eligible full time employees and their dependents. If an employee selects a plan other than the lowest priced plan, the City will pay ninety-five (95%) of the full premium cost for the selected dental coverage for eligible full time employees and their dependents and the employee shall pay five percent (5%) of the full premium cost for the selected plan.

6.2.2 Employees who retire will be eligible to continue dental coverage under the terms defined in the San José Municipal Code Section 3.36, et seq.

6.2.3 If the retiree who has selected the prepaid dental coverage option moves a significant distance away from a designated dental center, that employee may elect to be covered by the other available option(s).

6.3 Life Insurance. The City agrees to provide Life Insurance Coverage in the amount of \$10,000 for each full-time employee who is eligible for and a subscriber to life insurance benefits in accordance with the City's group life insurance policy.

6.3.1 The City further agrees that it will allow employees to purchase additional Life Insurance Coverage at the rate available to the City in amounts equal to one (1) times (up to a maximum value of \$250,000) or two (2) times (up to a maximum value of \$500,000) annual salary.

6.4 Payment-In-Lieu Of Health And/Or Dental Insurance Program.

6.4.1 The purpose of the payment-in-lieu of health and/or dental insurance program is to allow employees who have double health and/or dental insurance coverage to drop the City's insurance and receive a payment-in-lieu.

6.4.2 Employees who qualify for and participate in the payment-in-lieu of health and/or dental insurance program will receive fifty percent (50%) of the City's contribution toward the employee's health and/or dental insurance at the lowest cost single plan, or family plan if the employee is eligible for family coverage. The City will retain the remaining fifty percent (50%) of that contribution.

6.4.3 The payment-in-lieu of health and/or dental insurance program is available to full-time employees who are not on a reduced work week or unpaid leave and have alternate group health and/or dental coverage. To qualify, an employee must provide proof of alternate group coverage to Human Resources. Alternate coverage must be acceptable by the City.

6.4.4 Enrollment in the payment-in-lieu of health and/or dental insurance program can only be done during the first thirty (30) days of employment or during the annual open enrollment period. Enrollment in the payment-in-lieu of insurance program may be canceled by the employee only during the annual open enrollment period unless the employee loses alternate group coverage. Enrollment or cancellation

during the open enrollment period will become effective the first pay period of the following calendar year.

- 6.4.5 Domestic Partners. Effective October 31, 2001, IAFF members (active employees only) will be eligible to include domestic partners (per the terms and conditions as described on the Affidavit of Domestic Partnership) as dependents for benefits enrollment.
- 6.4.6 Payments for the in-lieu insurance program will be discontinued if an employee becomes ineligible for the program. An employee's ineligible status would include but not be limited to the following situations, employment status changes from full to part time, employee is on an unpaid leave of absence, employee is on a reduced work week, or employee loses or does not have alternate insurance coverage. An employee whose in-lieu payments are discontinued may enroll, if eligible, in a health and/or dental plan during the next annual open enrollment period.
- 6.4.7 If an employee loses alternate coverage, the employee may enroll in a City health and/or dental plan outside of the open enrollment period. To be eligible the employee must provide verification that alternate coverage has been lost.
  - 6.4.7.1 Health Insurance. To enroll in a City health insurance plan following loss of alternate coverage, the employee must pay all unpaid premiums (City and employee contributions) and refund any excess in-lieu-payments required to make the coverage effective on the date when alternate coverage ceased. Re-enrollment in the plan shall be in accordance with the carriers enrollment procedures.
  - 6.4.7.2 Dental Insurance. Enrollment in a City dental insurance plan following loss of alternate coverage will become effective the first of the month following payment of two (2) dental premiums through the City's payroll process. Re-enrollment in the dental insurance plan shall not be retroactive.

## **ARTICLE 7 EDUCATIONAL AND PROFESSIONAL INCENTIVES**

- 7.1 Tuition Assistance. The Tuition Assistance policy as provided in Section 8.01 (revised July 1, 1988) of the Personnel Administrative Manual of the City of San José shall be continued during the term of this Memorandum of Agreement. In no event shall tuition received from this program plus reimbursement from other educational incentive programs exceed the total cost of tuition and books.
- 7.2 Educational Incentive Plan. Exclusive of, and in addition to 7.1 above, the Firefighters' Educational Incentive Bonus Plan, as provided in Section 8.06 of the Personnel Administrative Manual (rev. September 4, 1985) of the City of San José, and attached hereto as "Exhibit V", shall be continued during the term of this Memorandum of Agreement.
  - 7.2.1 Department Educational Incentive Program. During the term of this Agreement, the parties agree to refer to a Labor-Management Committee the issue of a new

Educational Incentive Program for bargaining unit members. Such Committee shall consider eligibility criteria for the incentive, tuition reimbursement, cost reimbursement and similar matters. Pending completion of such review and mutual agreement on a new program, the current program shall continue in effect.

- 7.2.2 Paramedic Continuing Education Classes. Continuing Education classes required to maintain licensing and accreditation for employees assigned to the City's paramedic program shall be paid for by the City. The City will attempt to schedule continuing education classes during on-duty hours. However, if a front-line or support paramedic attends a required continuing education class during off-duty hours, the employee shall be compensated at the appropriate rate. All overtime hours are subject to provisions outlined in Article 14, Hours of Work and Overtime.
- 7.3 Associate Degree in Fire Science. Each employee who has been awarded an Associate of Arts degree in Fire Science or an Associate of Science degree in Fire Science by an accredited college or university and meets any other requirements of this agreement, shall be paid, for each biweekly pay period for which the employee is entitled to receive a salary, the amount of \$35.00 in addition to the salary established for the class to which the employee is assigned from and after the beginning of the pay period following the date on which proof is filed with the Director of Finance that the employee has been awarded such degree. No employee shall be entitled to receive payment for more than one (1) such degree.
- 7.4 Firefighter Apprenticeship. During the term of this Agreement, as long as the City and the Union subscribe to a Subscription Agreement with the California Firefighter Joint Apprenticeship Committee and all applicable rules thereto, the Subscription Agreement, its terms and all rules and regulations applicable thereto will be expressly incorporated into this Agreement and made a part hereof.

## **ARTICLE 8 UNIFORM ALLOWANCE**

- 8.1 An annual Uniform Allowance not to exceed \$495.00 shall be paid to each sworn person who holds a position within the classifications listed below in accordance with the provisions of Section 8(a) of Resolution Number 51872, as amended, by the City Council. This shall be paid on a regular paycheck and the required tax deductions shall be applied.

2314	Battalion Chief	3333	Fire Master Mechanic
2313	Fire Captain	2326	Fire Prevention Inspector
3332	Assistant Fire Master Mechanic	2312	Fire Engineer
2310	Fire Fighter Recruit	2311	Fire Fighter
2328	Arson Investigator		

Upon successful completion of the firefighter academy, a firefighter recruit shall receive an advance of \$250.00 to be deducted from future uniform allowance payments.

- 8.2 If an employee entitled to uniform allowance has less than two-thousand eight-hundred eighty (2,880) paid hours in the prior year, then uniform allowance will be reduced in the proportion that the employee's unpaid hours bear to two-thousand eight-hundred eighty (2,880) or equivalent conversion time for personnel on a forty (40) hour schedule.

## **ARTICLE 9 WORKING IN A HIGHER CLASSIFICATION**

- 9.1 Upon specific assignment by the Department Head, or a designated representative, an employee may be required to perform the duties of a higher classification. Such assignments shall be made only to existing authorized positions which are not actively occupied due to the temporary absence of the regularly appointed employee. Such assignments shall not be made to vacant positions except in accordance with the rules pertaining to Temporary or Provisional appointments.
- 9.2 Employees specifically assigned to duties of a higher classification shall be compensated at the rate in the salary range of the higher class which is at least one (1) salary rate (step) higher in the salary range schedule than the rate received by the employee in the employee's present class, provided, however, that such compensation shall not be paid unless the employee has completed ten (10) or more hours in a shift or ten (10) or more hours in two (2) consecutive shifts in the said higher classification and provided that the employee assigned to a forty (40) hour work week has completed at least one-half (1/2) day in said higher classification.

## **ARTICLE 10 CALL BACK PAY AND STANDBY PAY**

- 10.1 Any employee who is called back to work after the employee has worked their scheduled shift and has departed from their place of employment shall be credited with overtime for the time worked, or for three (3) hours at the appropriate rate of compensation, whichever is greater. An employee called back to duty shall be entitled to the three (3) hour minimum call back compensation only once per workday; for subsequent call backs during the same day, the employee shall be credited with the time worked or for one-half (1/2) hours at the appropriate rate, whichever is greater.

Time worked for minimum staffing and call back purposes shall begin when an employee arrives at the work site. Employees shall be allowed one and one half (1.5) hours to arrive at the work site after receiving the call to report to duty.

- 10.2 Employees who are required to perform standby duty shall be credited with two (2) hours compensation at the appropriate rate for such standby duty performed on a regularly assigned work day and three (3) hours compensation at the appropriate rate for such standby duty assigned on regularly scheduled days off. When an employee assigned such standby duty is called back, the employee shall be entitled to the compensation provided by Section 10.1 only, and to no compensation pursuant to this Section 10.2.

## **ARTICLE 11 WITNESS LEAVE**

- 11.1 Each employee of the City who is required, under subpoena sought by the City or other directive of the City, to take time off duty with the City, to appear as a witness, by reason of their employment with the City, in any arbitration, administrative hearing or case or proceeding in any court of this State or of the United States of America, shall receive their regular salary during the time of service as a witness under subpoena, less any and all witness fees which the employee may receive thereafter.
- 11.2 Each employee of the City who is called from off-duty status to testify in an arbitration, administrative hearing or in court, under subpoena sought by the City or other directive of the City on any subject connected with their employment, shall be credited with overtime for the time spent by the employee in such arbitration, administrative hearing or court, or for three (3) hours, whichever is greater, less any and all witness fees which the employee may receive thereafter.
- 11.3 Upon service of subpoena, an employee shall immediately advise the Department Head or supervisor thereof, and of the time when the employee is required to appear in court in response thereto.

## **ARTICLE 12 JURY DUTY**

- 12.1 Each full-time employee who is required to take time off from duty to serve as a juror in any court of this State, or of the United States of America shall receive the regular base compensation less all jury fees received excluding mileage. Each employee receiving a notice to report for jury service shall immediately notify the immediate supervisor. Eligibility for jury compensation shall be subject to the following:
- 12.2 Employees assigned to other than a twenty-four (24) hour shift.
  - 12.2.1 In those cases in which the employee is released by the court at 1:00 p.m. or earlier, the employee will report for duty and work the balance of their shift. For this the employee receives the full day's pay, and shall pay to the City the amount received from the court for the jury duty, excluding mileage.
  - 12.2.2 In the event the employee does not return to work after having been released at 1:00 p.m. or earlier, the employee will receive no pay from the City for that day, but will be entitled to keep the jury fee.
  - 12.2.3 In those cases in which the employee is not released by the court until after 1:00 p.m., the employee need not return to work. The employee receives the full day's pay, and shall pay to the City the amount received from the court for the jury duty, excluding mileage.
- 12.3 Employees assigned to a twenty-four (24) hour shift.
  - 12.3.1 Employees who are assigned to work a twenty-four (24) hour shift and who serve on a jury on their assigned work day, shall return to their assigned station upon completion of such jury service. In the event such employee is required to report

for jury service on the following day, the employee will be released from their assigned work shift at 9:00 p.m. The employee shall notify their immediate supervisor or battalion chief of this jury service requirement. Such time off will be considered time worked. Jury service is defined to include a day in which an employee must report to a court of law for jury selection or voir dire. Notwithstanding any other provisions in this agreement or the OAG to the contrary, the City will not be required to minimum staff for positions, other than front-line paramedic positions, vacated at 9:00 P.M.

12.3.1.1 Support paramedics will be utilized first to fill the vacancy. If a support paramedic is unavailable, the Fire department will use minimum staffing.

12.3.2 In the event that the employee does not return to their regularly assigned shift after release by the court, the employee will receive no pay from the City for that day, but will be entitled to keep the jury fee.

12.4 Absences of Employees Assigned To Front-Line Paramedic Duty. All absences of front-line paramedics due to jury duty shall be filled.

## **ARTICLE 13 USE OF PRIVATE AUTOMOBILE**

13.1 Each employee of the City who is authorized by the City Manager to use their private automobile in the performance of the duties of their position, shall be entitled to receive and shall be paid as a travel allowance for such use of their private automobile a "mileage reimbursement rate" consistent with the City's rate.

13.2 Employees shall not repair private vehicles while on duty.

13.3 Employees required to use a private vehicle, as provided in Section 13.1 above, who may suffer any loss to the vehicle while being operated while the employee is on duty and such loss is covered by the employee's collision insurance shall be reimbursed for any deductible provided by the insurance, but such reimbursement shall not exceed \$1,000 per loss.

## **ARTICLE 14 HOURS OF WORK AND OVERTIME**

14.1 The work week shall be seven (7) days commencing at 12:01 a.m. Sunday and ending at 12:00 Midnight the following Saturday.

14.2 The work day, for pay purposes, shall be a twenty-four (24) hour period commencing with the beginning of the employee's regularly scheduled shift.

14.3 Except as provided herein, the normal work schedule shall be forty (40) hours per week consisting of five (5) consecutive days of eight (8) hours each, exclusive of a lunch period, Monday through Friday. Employees assigned to work twenty-four (24) hour shifts shall be required to work at least an average of fifty-six (56) hours per week. Employees not assigned to work twenty-four (24) hour shifts shall be required to work an

average of eighty (80) hours per biweekly pay period, working either eight (8) or nine (9) hours per day, as determined by the Fire Chief. The Fire Chief may assign any employee holding a position in a classification listed in "Exhibit "I to work twenty-four (24) hour shifts whenever in the employer's judgment such is necessary to provide fire suppression or protection services during day and night hours.

- 14.4 Employees assigned to a forty (40) hour week shall be given two (2) consecutive days off even though the days off are in different work weeks, except where due to a change in the employee's work schedule, it is impossible to provide two (2) consecutive days off.
- 14.5 An employee authorized or required to work overtime who works in excess of eight (8) or nine (9) hours per day, or twenty four (24) hours per day if assigned to a work schedule of fifty six (56) hours per week, shall be compensated at the rate of one and one-half (1.5) the employee's hourly rate, except when such excess hours result from a change in such employee's work week or shift or from the requirement that such employee fulfill their work week requirement. No overtime compensation shall be paid for overtime worked which does not exceed thirty (30) minutes per day. Overtime worked which exceeds thirty (30) minutes in any work day shall be computed to the nearest one-half (1/2) hour.
  - 14.5.1 An employee assigned to a fifty-six (56) hour work week required to work overtime for work regularly assigned to forty (40) hour work week employees, or for the purpose of back filling an absence created by an employee assigned to a forty (40) hour work week shall be compensated at the overtime rate of one and one-half (1.5) times the employee's 1.4 rate for each overtime hour worked in the forty (40) hour position. In all other instances an employee assigned to a fifty-six (56) hour work week shall not be eligible for overtime at the 1.4 rate. An employee assigned to a fifty-six (56) hour work week shall not be eligible for overtime pay based on conversion to the forty (40) hour work week pay rate when assigned work which is part of the suppression line job function for their rank e.g., QAB's promotional interview boards, suppression line training, EMT proctoring, and special projects or committees.
- 14.6 Overtime worked shall be compensated, at the one and one-half (1.5) rate, by compensatory time. However, the Department Head may authorize payment in lieu of compensatory time where providing such compensatory time would impair departmental operations or efficiency. Except in extenuating circumstances, once the employee has received approval from the appropriate authority to take compensatory time off, payment for such approved time off shall not be authorized. An employee who transfers from working a forty (40) hour per week assignment to working twenty-four (24) hour shifts, or vice versa, shall have the employee's unused compensatory time balance converted accordingly by a factor of 1.4.
- 14.7 Compensatory time credited to an employee, and which is not taken within twenty-six (26) pay periods following the pay period in which the overtime is worked, shall be paid to the employee at the appropriate rate.
  - 14.7.1 Compensatory time earned while on a forty (40) hour week assignment shall be converted to reflect a fifty-six (56) hour work schedule whenever employee is transferred to a fifty-six (56) hour work schedule. Compensatory time earned

while on a fifty-six (56) hour week assignment shall be converted to reflect a forty (40) hour work schedule whenever an employee is transferred to a forty (40) hour work schedule.

- 14.8 Notwithstanding any other provision of this Article 14 to the contrary, the Fire Department may announce its intent to pay employees for accrued compensatory time that is not used as of a date specified by the department. The announcement will also specify a date by which time each affected employee must elect to either:

14.8.1 be paid for all accrued, unused compensatory time, OR

14.8.2 be paid for all but twenty-four (24) hours of such accrued, unused compensatory time, OR

14.8.3 retain all accrued, unused compensatory time, subject to other applicable provisions of this Article 14.

Any employee not making an election will retain their compensatory time, subject to other provisions of this Article.

- 14.9 Time spent on paid sick leave, disability leave, holiday leave, vacation leave, military leave, compensatory time off duty, or other authorized paid leave shall be deemed as time worked for purposes of this article.
- 14.10 An employee who is terminated by reason of resignation, discharge or retirement and who upon the effective date of such termination has accrued unused compensatory time earned from and after July 1, 1968, shall be paid for such hours of unused compensatory time at the employee's straight time hourly rate. In the event the termination results from the death of the employee, the payment, if any, shall be made to the executor of the will or the administrator of the estate.
- 14.11 The present fifty-six (56) hour work week and shift schedule shall continue during the term of this Agreement unless mutually changed by the parties.
- 14.12 The City shall provide suitable sanitation facilities for incidents which will last more than four (4) consecutive hours.
- 14.13 All employees assigned to fire line suppression duties shall receive ninety (90) minutes per shift for exercise or work-out needs in accordance with applicable Department policies, provided, however, that this provision shall not entitle any employee to overtime work for the purpose of exercising.
- 14.14 During the term of this Agreement, the City may create one or more new 40-hour per week assignment engine companies. If the City implements a new 40-hour per week engine company, the City will meet and confer with IAFF, Local 230 regarding matters within the scope of representation for each new 40-hour per week company.

## **ARTICLE 15 DUES DEDUCTION**

- 15.1 The City will deduct from the pay of each employee covered by this Memorandum of Agreement, while such employee is assigned to a classification included in a representation unit represented by the Union, dues uniformly required as a condition of membership, pursuant to the Union's constitution and by-laws provided that the employee has signed an appropriate Authorized Dues Deduction card. Such authorization shall be on a form approved by the Municipal Employee Relations Officer.
- 15.2 Payroll dues deductions shall be in the amount certified to the Municipal Employee Relations Officer from time to time by the designated officer of the Union as a regular monthly dues.
- 15.3 Deductions shall be made from wages earned by the employee for the first two (2) pay periods in each month for dues for the preceding month. The City will remit to the designated officer of the Union the amounts so deducted accompanied by a list of the employees for whom the deduction was made. The deductions and the list will be remitted to the Union not later than twenty-one (21) days following the pay period in which the deductions were made. The City shall deduct and remit without cost to the Union.
- 15.4 Properly executed dues deduction cards and an alphabetical list of the additional employees authorizing the deductions shall be submitted to the Municipal Employee Relations Officer on or before the Monday of the week preceding the beginning of the pay period in which deductions are to be made.
- 15.5 If, through inadvertence or error, the City fails to make the authorized deduction, or any part thereof, the City shall assume no responsibility to correct such omission or error retroactively.
- 15.6 It is expressly understood and agreed that the Union will refund to the employee any Union dues erroneously withheld from an employee's wages by the City and paid to the Union. In the event the Union fails to refund the dues erroneously withheld within a reasonable period of time following notification, the City will make such refund and deduct the amount from the amount due to the Union.
- 15.7 The Union shall indemnify the City and hold it harmless against any and all suits, claims, demands and liabilities that may arise out of or by reason of any action that shall be taken by the City for the purpose of complying with the foregoing provisions of this Article, or in reliance on any list or certification which shall have been furnished to the City under the above provisions.

## **ARTICLE 16 MANAGEMENT RIGHTS**

- 16.1 Neither party concedes or relinquishes its rights under Charter Section 1111.

Such rights include the ability by the City, for example, to propose a change in terms and conditions of employment not otherwise covered by the Agreement and to seek such change pursuant to Charter Section 1111.

In addition, the City reserves its rights to determine matters outside the scope of representation.

Thus, except to the extent that Section 1111 of the Charter of the City of San José grants rights to the parties herein, and except to the extent that rights are specifically limited by the provisions of this Agreement, the City retains all rights, powers and authority granted to it or which it has pursuant to law or other provisions of the City Charter including, but not limited to: the right to direct the work force; increase, decrease or reassign the work force; hire, promote, demote; discharge or discipline for cause; or reclassify employees; provide merit increases; assign employees overtime and special work requirements, and to determine the necessity, merits, mission and organization of any service or activity of the City or any City Department Agency or Unit.

16.2 The City has the sole and absolute right to determine the nature and type of, assign, reassign, revoke assignments of or withdraw assignments of, City equipment, including motor vehicles, to or from employees during, after, or before hours of duty, without consultation or meeting and conferring with the employee affected or the International Association of Firefighters, Local No. 230 representing such employee.

16.3 The parties agree that OAG Section 240 shall contain the following language:

#### 240.1 Transfers and Assignments

##### A. Authority

1. It is recognized and agreed that the primary obligation of the Department is to provide service of the highest quality to the public. The right to assign personnel is inherent to providing such quality service. Management also recognizes the desire of employees to periodically request changes in work assignments.
2. Officers may refuse any request for transfer of personnel within their command if in their opinion such transfer would reduce efficiency of the Department. Any such transfer and the reasons therefore shall be set forth in writing by the officer refusing the transfer and sent to the Fire Chief, through channels, with a copy delivered to the member requesting the transfer.

If the Chief denies the bid without a recommendation from the Chain of command, the reasons for such denial shall be given in writing to the employee. The employee requesting the transfer which has been refused shall have five (5) days from the receipt of the notice of refusal to file written objections with the Chief.

Move from 240.1(C)1. All transfers of personnel within the SJFD shall be made on the basis of seniority rights, except transfers made by mutual agreement, support paramedics, bi-lingual positions assignments, assignments to the HIT Unit, assignments to a USAR Company, and transfers for the good of the Department.

If the employee wishes to appeal the Chief's denial, the employee may within ten (10) working days, request a review by the City Manager or designee. Such

request shall be in writing, and shall include reasons why the employee is not satisfied with the decision rendered. The City Manager has ten (10) working days in which to notify the employee of the results of such review. The decision of the City Manager or designee shall be final and binding.

The City shall amend the OAG to permit Inspectors in the Fire Prevention Bureau to bid within the Inspector Series by seniority once the position becomes vacant.

The Chief retains the right to deny a bid, change the location of a position, or change an assignment to meet workload demands.

## **ARTICLE 17 FULL UNDERSTANDING, MODIFICATION AND WAIVER**

17.1 This Agreement sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any or all prior or existing Memorandum of Understanding, understandings and agreements, whether formal or informal, are hereby superseded and terminated in their entirety.

17.2 Existing benefits within the scope of representation, provided by ordinance or resolution of the City Council or provided in the San José Municipal Code, or provided in the Memorandum of Agreement shall be continued without change during the term of this Agreement.

17.3 It is the intent of the parties that ordinances, resolutions, rules and regulations enacted pursuant to this Memorandum of Agreement be administered and observed in good faith.

When the Department proposes to change any departmental rule or regulation, it will provide a copy of such change to the Union no less than seven (7) days prior to implementation of the proposed change. If such proposed change materially impacts any matter within the scope of representation, then the parties agree to meet and confer over such impact and proceed under Section 1111 of the City Charter if no agreement is reached.

17.4 Although nothing in this Agreement shall preclude the parties from mutually agreeing to meet and confer or negotiate on any subject within the scope of representation during the term of this Agreement, it is understood and agreed that neither party may require the other party to meet and confer or negotiate on the subject matter covered herein. This provision shall not apply to matters covered by the provisions entitled "Consolidated Arbitration," in the Grievance Procedure herein.

17.5 Both parties agree that, at the request of the other, the first negotiation session shall occur during the first full week of the month of April immediately prior to the contract expiration.

## **ARTICLE 18 CONCERTED ACTIVITY**

- 18.1 Participation by any employee represented by the Union in picketing with respect to any issue concerning matters within the scope of representation provided or proposed to be provided by the City of San José for employees in this unit, or participation in a strike, work stoppage or slowdown or any other concerted activity which diminishes services provided by employees in this unit, or the failure to perform lawfully required work shall subject the employee to disciplinary action up to and including discharge.
- 18.2 If the Union, its officers or its authorized representatives violate provision (18.1) above or tolerate the violation of provision (18.1) above and after notice to responsible officers or business representatives of the Union such officers or business representatives fail to take such prompt affirmative action as is within their power to correct and terminate the conduct described in provision (18.1) above, in addition to any other law, remedy or disciplinary action to which it or its officers or representatives may be subject, said organization shall, by action of the Municipal Employee Relations Officer, also be subject to suspension or revocation of the recognition granted to such Union and the Municipal Employee Relations Officer may suspend or cancel any or all payroll deductions payable to or in behalf of members of such Union, and prohibit or restrict the use of any City facility of any nature whatsoever and prohibit or restrict access by said officers or representatives to work or duty stations of employees in the representation unit. Such action on the part of the Municipal Employee Relations Officer shall not be subject to review under the provisions of Article 20, entitled Grievance Procedure.

## **ARTICLE 19 SAFETY**

- 19.1 The City shall provide a reasonably safe and healthy working environment in accordance with applicable State and Federal laws and regulations. The Union agrees that where safety devices or protective equipment is required or furnished, its use shall be mandatory.
- 19.2 A Safety Committee shall be established and composed of seven (7) members; three (3) members to be designated by the City Manager and three (3) members to be designated by the Union. The seventh (7th) member shall be the City of San José Safety Officer who shall be the Chairman of the Safety Committee. The Safety Committee shall meet not less than once each quarter, or more frequently if requested by the chairman or a majority of the Committee. The Safety Committee shall review the safety standards and procedures for the Fire Department and shall report to the parties at least quarterly with such recommendations as it deems proper. The Department will promptly respond in writing to any formal, written recommendation of the Committee.
- 19.3 Safety issues which employees wish to submit to the Committee must be submitted in writing, via a committee member, on a form provided by the Department. The employee shall indicate the nature of the problem, any known safety standards that are applicable, and a proposed solution to the problem.
- 19.4 The City agrees to establish a separate reporting system for exposures to communicable diseases and hazardous materials. This reporting system will be distinct and in addition to the Employer's Report of Occupational Injury or Illness (Form 5020) currently in use.

The reports of exposures to communicable diseases and hazardous materials will be collected through an automated system and will be used to establish a data base reference and to analyze data concerning exposures, recorded on the basis of an individual employee's exposures as well as specific materials to which more than one (1) employee is exposed. The City agrees to provide employees, upon request, with copies of their personal exposure records. The Department shall ensure that data entry shall be timely maintained. Summary data shall be made available to the Union.

19.4.1 To replace, through normal attrition, all turnouts so that they meet Project Fires Standards, all harnesses for Self Contained Breathing Apparatus (SCBA) with Kevlar harnesses and all SCBA metal bottles with "light-weight" composite bottles.

19.4.2 To continue the Diesel Fume Emission Program, (including purchase of new equipment where appropriate).

19.4.3 To test all aerial ladders at least every two (2) years.

19.4.4 To comply with all applicable laws covering emergency vehicles.

19.4.5 To continue to make available Hepatitis B vaccinations either through employee health insurance plans or at no additional cost to the employees.

19.4.6 In accordance with existing policy, the City agrees to provide physical examinations for employees under forty-five (45) years of age once (1) every three (3) years. For employees forty-five (45) years of age or older, the City agrees to provide physical examinations once (1) every two (2) years. For employees required to hold a Class A or B drivers license, the City agrees to provide physical examinations as required by law for operators of Fire Service apparatus. Notwithstanding any provision of this section, the City may elect to conduct, or have conducted, physical examinations at other times such as upon return from sick leave or disability leave or upon promotion.

## **ARTICLE 20 GRIEVANCE PROCEDURE**

20.1 Any dispute between the City and an employee, or, between the City and the Union, regarding the interpretation or application of this Memorandum of Agreement shall be considered a grievance. A grievance may be filed by an employee on their own behalf, or by the President of the Union, or designated representative(s).

### **20.2 Step I.**

20.2.1 An employee may present the grievance orally either directly or through the Union representative to the immediate supervisor within fourteen (14) calendar days following the event or events on which the grievance is based. The immediate supervisor shall make whatever investigation necessary to obtain the facts pertaining to the grievance. Within seven (7) calendar days after receiving the oral grievance, the immediate supervisor shall give the employee a reply.

- 20.2.2 If the employee is not satisfied with the reply of the employee's immediate supervisor, the employee may appeal the grievance to Step II.

20.3 Step II.

- 20.3.1 If the employee desires to appeal the grievance to Step II, the grievance shall be reduced to writing, on forms provided, and presented to the Chief or Assistant Chief within seven (7) calendar days following the receipt of the immediate supervisor's oral reply. The Assistant Chief may refer the grievance to the appropriate supervisor.
- 20.3.2 The written grievance shall contain a complete statement of the grievance, and alleged facts upon which the grievance is based, the reasons for the appeal, the remedy requested, and the sections of the agreement claimed to have been violated, if any. The grievance shall be signed and dated by the employee.
- 20.3.3 The Assistant Chief, or appropriate supervisor to whom the grievance has been referred, may arrange a meeting with the employee and appropriate Union representative and attempt to resolve the grievance. In any event the Assistant Chief, or designated representative, shall give a written decision to the employee within fourteen (14) calendar days following receipt of the written appeal to Step II.
- 20.3.4 If the employee is not satisfied with the decision, the employee may appeal the grievance to Step III.

20.4 Step III.

- 20.4.1 If the employee desires to appeal the grievance to Step III, the employee shall complete the appropriate appeal section of the grievance form, sign the appeal, and present the grievance to the Municipal Employee Relations Officer within seven (7) calendar days following receipt of the written decision at Step II.
- 20.4.2 Within fourteen (14) calendar days after receipt of the appeal to Step III, the Municipal Employee Relations Officer shall hold a meeting with the employee, the appropriate Union representative, and the Assistant Chief or the appropriate supervisor to discuss the matter. A written decision shall be given the employee or the appropriate Union representative within seven (7) calendar days following the meeting.
- 20.4.3 If the grievant is not satisfied with the decision of the Municipal Employee Relations Officer, the appropriate representative of the Union may appeal the grievance to Step IV -- Arbitration.

20.5 Step IV - Arbitration.

- 20.5.1 If the grievance has been properly processed through the previous steps of the procedure and not resolved, the appropriate Union representative may appeal the grievance to Arbitration. The appropriate Union representative shall notify the Municipal Employee Relations Officer, in writing, within fourteen (14)

calendar days following receipt by the employee of the written answer at Step III.

- 20.5.2 Within fourteen (14) calendar days following the receipt of the notice of appeal to Step IV, a meeting shall be arranged by the Municipal Employee Relations Officer with the appropriate Union representative to prepare a joint statement of the issue, or issues, to be presented to the arbitrator. If the parties are unable to agree upon the issue, or issues, each party will prepare its statement of the issue, or issues, and jointly submit the separate statement of issue, or issues to the arbitrator for determination.
- 20.5.3 The parties may mutually agree upon the selection of the arbitrator or shall jointly request the State of California Mediation and Conciliation Service to provide a list of seven (7) persons qualified to act as arbitrators.
- 20.5.4 Within seven (7) calendar days following receipt of the above referenced list, the parties shall meet to select the arbitrator. The right to strike the first name shall be determined by lot and the parties shall alternately strike one name from the list until only one (1) name remains, and that person shall be the arbitrator.
- 20.5.5 The arbitrator shall hold a hearing on the issue, or issues, submitted, or as determined by the arbitrator if the parties have not mutually agreed upon the issue, or issues, and render a written opinion and reasons for the opinion as soon after the hearing as possible. The opinion shall be final and binding on both parties, and shall be limited to the issue, or issues involved.
- 20.5.6 The opinion shall be sent to the Municipal Employee Relations Officer and to the employee or appropriate representative of the Union.
- 20.5.7 Except as hereinafter provided, each of the parties shall pay for the time and expenses of its representatives and witnesses through all stages of the arbitration procedure and shall contribute equally to the fee and expenses of the arbitrator. The arbitrator's fee schedule, whenever possible, shall be determined in advance of the hearing.
- 20.5.8 Witnesses who are employees and on duty at the time of scheduled appearance shall be released from duty without loss of compensation for the time required to testify. No overtime payments shall be made because of scheduled appearances.
- 20.5.9 Individual grievants shall be released from duty without loss of pay for the time of the arbitration hearing. One (1) spokesperson shall be permitted to be present without loss of compensation for grievances filed by the Union.
- 20.5.10 Arrangements for release time for grievant's witnesses shall, wherever possible, be made with the Municipal Employee Relations Officer no later than twenty-four (24) hours in advance of the scheduled hearing.
- 20.5.11 The parties agree that the arbitrator shall not add to, subtract from, change or modify any provision of this agreement and shall be authorized only to apply

existing provisions of this Agreement to the specific facts involved and to interpret only applicable provisions of this Agreement.

20.5.12 The parties agree that the time limits set forth herein are of the essence of this procedure and are to be strictly complied with. Time limits may be extended only by written mutual agreement of the parties. The parties shall meet at least seven (7) calendar days prior to the arbitration hearing date for the purpose of narrowing issues for arbitration, discussing possible stipulations and exchanging documents intended for use at the hearing.

## 20.6 Immediate Arbitration.

20.6.1 Any party may waive the grievance procedure time limits specified in this Article and proceed to immediate arbitration in any case where the party alleges that the other is threatening to take an action in violation of the Agreement in so short a period of time as to disallow the party from proceeding within the time limits of this Article. However, the method of proceeding to Immediate Arbitration must be done consistent with the following provisions.

20.6.2 The arbitration shall take place no earlier than the fifteenth (15th) day following the request by the grieving party for such "Immediate Arbitration," unless otherwise mutually agreed. During the two (2) week period, fourteen (14) calendar days, immediately following the request for Immediate Arbitration, the responding party shall have the opportunity to attempt to resolve the dispute.

20.6.3 If the City is the responding party, the Fire Chief and Director of Employee Relations, or their designated representatives, jointly, shall have the opportunity to meet with or otherwise communicate with appropriate Union representatives, in an attempt to resolve the dispute.

20.6.4 Once the request for Immediate Arbitration is filed, the parties shall (even though dispute resolution discussions are going on during the two (2) week period) attempt to agree upon a neutral arbitrator and to obtain a date for arbitration hearing as soon as possible immediately following the two (2) week period.

20.6.5 The parties will attempt to have a standing list of available "Immediate Arbitrators," but if no agreement on same is reached, the parties will obtain five (5) arbitrators, by telephone if possible, from the State Mediation and Conciliation Service. The first arbitrator available to hear the matter following the two (2) week period shall be selected as arbitrator. The order of contacting the potential arbitrators shall be determined by lot unless mutually agreed otherwise. The parties are free to mutually agree upon an immediate arbitrator through any other process or agreement.

20.6.6 In any such case, the arbitrator selected to decide the dispute or grievance shall have the full and equitable power to frame a decision, including an order to the party initiating the dispute or grievance to abide by the time limits provided in the Article, or a restraining order against the party threatening the action or any other form of arbitration order that would resolve the matter in an equitable and

just manner. However, the arbitrator may not add to, subtract from, change or modify any provision of this Agreement and shall be authorized only to apply existing provisions of this Agreement to the specific facts involved and to interpret only applicable provisions of this Agreement.

20.6.7 Unless the parties agree otherwise, closing argument shall be presented orally and there shall be a "bench" decision.

20.6.8 The parties shall attempt to have the arbitration proceedings completed as quickly as possible, including by meeting nights and weekends, if at all possible.

## 20.7 Consolidated Arbitration.

20.7.1 If a matter goes to arbitration, and an arbitrator determines that the dispute in question is not otherwise covered by this Agreement, but would be subject to the provisions of Section 1111 of the Charter of the City of San José, then the same arbitrator serving as the neutral arbitrator and chairperson shall convene a three (3) member Board of Arbitrators and shall have the same authority as if selected as the neutral arbitrator under Charter Section 1111. The non-neutral members of the Board shall be chosen as provided in Section 1111. The Board shall conduct "mediation/arbitration". The Parties contemplate the sort of "mediation/arbitration" as the process is traditionally used in the San Francisco Bay Area. This process shall constitute issue by issue, last best offer arbitration proceedings as described in Charter Section 1111.

20.7.2 The parties herein contemplate eliminating the additional time and expense that would occur if a separate arbitrator had to be chosen under Section 1111 to hear/resolve the dispute in a separate proceeding.

## 20.8 Disciplinary Grievances.

20.8.1 Employees in the bargaining unit shall only be disciplined for cause. Discipline is defined to include those matters which are cognizable before the Civil Service Commission, including Step Reductions.

Step Reduction. As an alternative to other forms of discipline, the appointing authority may reduce an employee's salary step for a specified period of time. The employee may appeal this action, including the amount and the length of time, to the Civil Service Commission according to the same rules as apply to other formal disciplinary appeals or pursuant to the disciplinary procedure set forth in this Agreement.

20.8.2 Persons on probationary status (entry-level or promotional) may not appeal under this agreement rejection on probation.

20.8.3 Letters of reprimand may be appealed under this section only to the City Manager level.

20.8.4 An employee challenging discipline shall have the option of choosing between the dispute-resolution provisions of this Agreement, or appeal to the Civil

Service Commission. The election of one (1) remedy shall constitute a waiver of the other. Any employee who wishes to preserve the right of appeal to the Commission must comply with the time requirements for filing such appeal as specified in the Civil Service Rules.

- 20.8.5 An employee appealing to binding arbitration shall do so by filing a written request with the Municipal Employee Relations Officer within twenty (20) days of service upon the employee of the Notice of Discipline on which the discipline is based. The arbitration provisions of the grievance procedure of this Agreement shall apply, including those dealing with time limits, but shall not include the provisions dealing with "Immediate Arbitration".
- 20.8.6 As otherwise provided in this Agreement, for the disciplinary matter to go to binding arbitration, the Union must agree (i.e., must be the party taking the matter to arbitration).
- 20.8.7 Notwithstanding the provisions of San José Municipal Code 3.04.1700 D., employees in this unit shall not be eligible to apply for a hearing by the Civil Service Commission regarding performance ratings.

## 20.9 General Provisions of Grievance Procedure.

- 20.9.1 Although grievances may be processed during normally scheduled working hours, the Union agrees that the time spent by its designated representatives shall be kept to a reasonable minimum and that no Union representative shall be entitled to any additional compensation or premium pay for any time spent in processing grievances outside such representative's regularly scheduled hours. The Union also agrees that it will not process grievances during periods of overtime.
- 20.9.2 Any grievance not filed or appealed within the time limits specified shall be considered settled on the basis of the last disposition given. In the event the grievance is not answered within the time limits set forth herein, either the employee, where provided, or the appropriate Union representative may appeal the grievance to the next higher step within the time limits provided.
- 20.9.3 The Union agrees that it will not initiate or pursue any other avenue of redress on any matter properly within the scope of representation, except as otherwise provided by law under the Doctrine of Exhaustion of Administrative Remedies, the Union agreeing that it will not initiate or pursue any other avenue of redress on any matter properly within the scope of representation until the provisions of this Article, including arbitration, have been utilized.
- 20.9.4 If an employee desires to file a grievance involving separation from City employment pursuant to the application of Article 26, entitled Leaves of Absence, the employee shall file the grievance in writing at Step II within ten (10) calendar days following the date of separation.
- 20.9.5 Any of the time limits specified in Steps I through III may be extended by written mutual agreement of the parties.

- 20.9.6 No resolution of any grievance, as defined in Article 20, entitled Grievance Procedure, shall be contrary to the provisions of the Memorandum of Agreement. Copies of the resolution of all grievances, including the grievance, shall be sent to the President of the Union.
- 20.9.7 It is understood and agreed that whenever a provision in this Article refers to an employee filing a grievance, the Union may file such grievance either on the employee's behalf or on behalf of the Union. In such event the processing of the grievance shall comply with all other provisions of the Grievance Procedure Article.
- 20.9.8 The Union agrees to provide the City with a list of representatives authorized to file grievances on behalf of the Union. Such list shall be kept current and shall contain no more than six (6) representatives in addition to the President of the Union.
- 20.9.9 If a party petitions to compel arbitration, then the prevailing party in such litigation shall be entitled to reasonable attorney's fees. This provision contemplates the prevailing party being either the petitioner or respondent in such litigation, including those situations in which the City is represented by the City Attorney's Office.
- 20.9.10 Nothing in the agreement between the City and the Union shall be construed so as to prevent the Union from working out any arrangement it chooses for the reimbursement or other payment by members of its bargaining unit for the costs of any arbitration proceeding involving a disciplinary grievance. The City shall have no responsibility for collecting such amounts.
- 20.9.11 Whenever labor/management grievances are resolved either by mutual agreement, Employee Relations Office decision, arbitration or court action, the City will transmit information regarding such resolution to Unit Commanders it selects. The Organization may notify those of its members it chooses through present means of communication.

## **ARTICLE 21 LEAVES OF ABSENCE**

- 21.1 The appointing authority, or designated representative, may grant an employee a leave of absence without pay for good and sufficient reason, not to exceed twelve (12) months. Such leaves may, however, be extended, not to exceed an additional six (6) months, upon written request of the employee, subject to the approval of the appointing authority, or designated representative. Written requests for an extension of a leave shall be submitted prior to the expiration of the leave.
- 21.2 Any leave granted pursuant to the provisions contained herein may be canceled by the appointing authority by notice in writing mailed to the employee at the employee's address on file in the Human Resources Department or such other address as the employee may designate. Such notice shall be by registered mail, return receipt requested and shall be mailed not later than thirty (30) days prior to the effective date of the cancellation of the leave. Failure of the employee to return to work on the first

scheduled work day after the effective date of the cancellation, or on the first scheduled work day following the expiration of a leave, shall be considered as voluntary resignation unless the failure to return is due to extenuating circumstances beyond the control of the employee. Each employee who is granted a leave pursuant to the provisions of this Article shall, upon return from leave, be entitled to a position within the classification held by the employee at the time the leave commenced, provided there is either a vacancy in such classification or an employee in the classification with less seniority whose duties the returning employee is qualified to perform.

- 21.3 For purposes of this Article, seniority shall be defined in accordance with Subsection 22.4.1 of Article 22, entitled Layoff.
- 21.4 Any employee who is absent without notification to the employee's Department Head, or other designated authority, for two (2) consecutive work shifts, shall be considered a voluntary resignation unless the failure to report is due to extenuating circumstances beyond the control of the employee.
- 21.5 Employees who have been separated from City service for failure to return from leave, or failure to report and whose failure is determined to be the result of extenuating circumstances beyond their control shall be reinstated.
- 21.6 The parties agree to implement the Federal and State Family Medical Leave Acts.

## **ARTICLE 22 LAYOFF**

- 22.1 Order of Layoff. When one (1) or more employees in the same class in a City department are to be laid off for lack of work, purposes of economy, curtailment of positions or other reason, the order of layoff shall be as follows:
  - 22.1.1 Provisional employees in the order to be determined by the appointing authority.
  - 22.1.2 Probationary employees in the order to be determined by the appointing authority.
  - 22.1.3 Permanent employees in inverse order of seniority within the classification being reduced, or in a higher class.
  - 22.1.4 Permanent employees shall be given every opportunity for transfer to other departments when layoff is pending.
- 22.2 Notice of Layoff. Employees subject to the provisions of this Article shall, wherever possible, be given at least thirty (30) calendar days notice in writing prior to the effective date of layoff. The appropriate employee organizations shall receive concurrent notice, and upon written request within seven (7) calendar days after the notice is given shall be afforded an opportunity to meet with the appropriate City representatives to discuss the circumstances necessitating the layoff and any proposed alternatives to such layoff.
- 22.3 Reassignment in Lieu of Layoff. In the event of layoff, any employee so affected may elect to:

- 22.3.1 Accept a position in a lateral or lower class in which the employee has previously served, provided the employee is otherwise qualified and is more senior than the least senior employee in such lateral or lower class.
- 22.3.2 Accept a vacant position in a lateral or lower class for which the employee has the necessary education, experience, and training as determined by the Director. An employee may also accept a vacant position in a higher class, provided the employee has held permanent status in such higher class and further provided that the employee's removal from the higher class was voluntary and occurred during the employee's most recent period of employment. Adverse decisions of the Director regarding necessary education, experience, and training shall be subject to the grievance procedure, including arbitration. The employee may file the grievance at Step III within ten (10) working days of the date of being notified of the adverse decision.
- 22.3.3 Any employee entitled to an option noted above, which involves assignment to a lower classification, may elect to be placed on layoff in lieu of accepting such assignment to the lower class. In the event the employee elects to be placed on layoff, such employee will only be recalled to the classification from which the employee elected to be placed on layoff or to any higher classification to which the employee may be entitled pursuant to the provisions of this Article.
- 22.4 Definitions. As used in this Article, the following words and phrases shall be defined as follows:
- 22.4.1 Except as otherwise provided above, seniority shall be defined as the length of continuous paid employment within any permanent class or classes within the classified service of the City. Seniority shall be retained but shall not accrue during any period of leave without pay, except for authorized military leave.
- 22.4.2 A lower class shall mean a class with a lower salary range.
- 22.4.3 A position in a lateral class shall mean a position in a class with the same salary range.
- 22.4.4 A position in a higher class shall mean a position in a class with a higher salary range.
- Except as otherwise provided herein, no employee shall be entitled to a position in a higher class as a result of the application of the provisions of this Article.
- 22.5 Layoff Reinstatement Eligible List.
- 22.5.1 The names of such persons laid off in accordance with the provisions of this Topic shall be placed upon a Reinstatement Eligible List in inverse order of seniority, i.e., the person with the greatest seniority on the Reinstatement Eligible List for the classes affected shall be offered reinstatement when a vacancy exists in the affected class. In the event the person refuses the offer of reinstatement, such person's name shall be removed from the Reinstatement Eligible List unless such person has reinstatement rights under the provisions of

this Article to a higher class than the one in which reinstatement is being refused.

- 22.5.2 In the event an employee accepts reinstatement to a lower class to which the employee is entitled, such person's name shall remain on the Reinstatement Eligible List for reinstatement to a lateral class provided such person, except for lack of seniority, would have been otherwise entitled to such lateral class at the time of the most recent layoff.
  - 22.5.3 Any person who is reinstated to a class which is the highest class to which the employee would have been entitled at the time of the layoff shall have their name removed from the Reinstatement Eligible List.
  - 22.5.4 In the event a person on layoff cannot be contacted by the City through usual and customary channels within ten (10) working days, such person's name shall be removed from the Reinstatement Eligible List, providing, however, that such person within the two (2) year period specified herein may bequest that their name be replaced on the Reinstatement Eligible List and such person's name may, in the sole discretion of the Director, be returned to the Reinstatement Eligible List.
  - 22.5.5 In no event shall the name of any person laid off pursuant to the provisions of this Article remain on a Reinstatement Eligible List for a period longer than two (2) years from the effective date of such person's most recent layoff.
- 22.6 Upon reinstatement to any classification to which the employee is entitled pursuant to the provisions of this Article, all benefits acquired by the employee prior to the employee's layoff shall also be reinstated. An employee shall not receive credit for time spent on layoff in computing time for a benefit entitlement.

## **ARTICLE 23 BULLETIN BOARDS**

- 23.1 The Union may use designated portions of City bulletin boards in City facilities which have employees in the representation unit for which the employee organization is recognized.
- 23.2 Subject to the provisions contained herein, the following type of Union notices and announcements listed below may be posted on the bulletin boards:
  - 23.2.1 Meetings, elections, welfare, recreational and social affairs and such other notices as may be mutually agreed upon between the Union and the Municipal Employee Relations Officer.
- 23.3 All material shall identify the Union responsible for its posting. Copies of all material to be posted must be filed with the Municipal Employee Relations Officer who shall have the sole and exclusive right to order the removal of any objectionable material.

- 23.4 The Municipal Employee Relations Officer shall notify the Union of any material ordered removed. The Union shall be given the opportunity to revise the material to delete the objectionable section or sections.
- 23.5 The City reserves the right to determine where the bulletin boards shall be placed and what portion of such bulletin boards are to be allocated to employee organizations.
- 23.6 Failure of the Union to abide by the provisions of this Article shall result in the forfeiture of the Union's right to have materials posted on City bulletin boards. The City agrees it will not exercise its rights provided herein in an arbitrary and capricious manner.

## **ARTICLE 24 HOLIDAY BENEFITS**

- 24.1 Subject to the provisions of Section 24.2 of this Article, each full-time employee who holds a position allocated to any classification assigned to Representation Unit No. Two shall be entitled to receive and shall be given as a holiday benefit from and after July 14, 1985, in lieu of any other holidays (excepting any other days proclaimed or designated by the Council as holidays for which full-time employees will be entitled to holiday leave), 4.7385 hours of time off for each biweekly pay period after July 14, 1985, during which the employee is assigned to twenty-four (24) hour shifts or 3.3847 hours of time off from duty for each biweekly pay period after July 14, 1985, during which such employee is not assigned to twenty-four (24) hour shifts, but exclusive of any such biweekly pay period spent by the employee on unpaid leave. Said holiday benefit shall be given to each such officer or employee at a time to be determined by the City Manager, in their discretion, or by the Fire Chief with the approval of the City Manager, either before or after the biweekly pay period as provided hereby, but in no event shall such benefit for any biweekly pay period be given before the beginning of the biweekly pay period for which such benefit is given, nor later than twenty-six (26) biweekly pay periods immediately following the biweekly pay period for which such benefit is given.
- 24.2 If, at any time on or before the expiration of twenty-six (26) biweekly pay periods immediately following the biweekly pay period during and for which any full-time employee becomes entitled to time off duty as a holiday benefit under the provisions of Section 24.1 of this Article, the City Manager shall find or determine that to give any such employee such benefit to which they may be entitled under Section 24.1 for any such pay period would seriously impair the efficiency of the Fire Department, the City Manager may order that such employee shall receive and be given, and in such event said employee shall thereupon be entitled to receive and shall be given in lieu of the holiday benefit to which the employee would otherwise be entitled for any biweekly pay period under the provisions of Section 24.1, such full-time employee shall be given as extra holiday compensation 5.623% of their regular salary during said biweekly pay period of full-time employment.
- 24.3 For the purpose of computing retirement benefits for employees covered by this Agreement, and in accordance with the provisions of 3.36.020 of the San José Municipal Code, the term "compensation" as it is used to determine retirement benefits shall be defined to include holiday pay.

## ARTICLE 25 VACATIONS

- 25.1 Employees shall accrue a leave of absence with full pay for vacation purposes, pursuant to the provisions of Resolution No. 51872, or amendments thereto. Accordingly, a full-time employee shall be entitled to accrue vacation leave in the amount specified in subsections 25.1.1 and 25.1.2 for each cycle of twenty six (26) full biweekly pay periods immediately preceding December 31, or portion thereof, in each year of employment. A full-time employee is not eligible to use accrued vacation until completion of at least thirteen (13) biweekly pay periods of employment with the City.

25.1.1 Employees assigned to a forty (40) hour work week:

<b>Years of Service</b>	<b>Hours of Vacation per twenty six (26) pay periods cycle</b>
First 5 years	80 hours
6th - 10th year	120 hours
11th - 12th year	136 hours
13th - 14th year	152 hours
15th year or more	200 hours

25.1.2 Employees assigned to fifty-six (56) hour work week:

<b>Years of Service</b>	<b>Hours of Vacation per twenty six (26) pay periods cycle</b>
First 5 years	120 hours (five full shifts)
6th - 10th year	168 hours (seven full shifts)
11th - 12th year	192 hours (eight full shifts)
13th - 14th year	216 hours (nine full shifts)
15th year or more	288 hours (twelve full shifts)

- 25.2 Reimbursement for Unearned Vacation Leave. If the employment of any full-time employee should cease, and if they should have taken more vacation leave than they had accrued at the time of termination of their employment, there shall be deducted from their final pay, or the employee shall refund to the City, such pay as the employee shall have received for such unearned and unaccrued vacation leave theretofore taken by the employee. The provisions of this Subsection 25.2 shall not apply to any full-time employee whose employment by the City is terminated by reason of death, or entry into active duty with any of the Armed Forces of the United States that is reasonably likely to exceed one (1) year in duration.
- 25.3 Payment for Unused Accrued Vacation Leave Upon Termination of Employment. If the employment by the City of any full-time employee should cease, the employee shall be given, at the time of such termination, full pay for any vacation leave which the employee may then have accrued.
- 25.4 Vacation Pay. If in the judgment of the City Manager it is desirable by reason of a shortage of staffing or increased volume of work, to permit any full-time employee to work for the City during the time ordinarily allocated to such employee for vacation

purposes, the employer may authorize such work. An employee who elects to perform such additional work shall be entitled to receive as additional compensation for such work an amount of money equal to the employee's regular pay for such hours of work if such were not rendered during vacation leave, or, in lieu thereof, the employee may elect, in writing, filed with the Director of Human Resources, to carry over such leave to the subsequent cycle of twenty six (26) biweekly pay periods.

25.5 Vacation Leave. Any and all leaves granted pursuant to this Article shall be granted at such time or times as will not reduce the number of employees below that which is reasonably necessary for the efficient conduct of the public business of such department, except no employee who is authorized to take a leave for vacation purposes shall be required to commence such leave at a time other than the beginning of a work week or the beginning of a cycle of twenty four (24) hour shifts, unless the employee elects or consents to commence such leave at another and different time. Subject to the above provisions, preference of vacation leave timing in any calendar year shall be given in order of seniority. For purposes of this section "seniority" shall be determined by the relative length of time served by each employee in the classification in which the employee is employed in a department of the City Government, and by the length of time during which such employee has worked on any shift if more than one (1) shift is worked by employees in such classification.

25.6 Computation of Vacation Leave. For purposes of this Article, paid leave of absence from duty by reason of sick leave, holiday leave, vacation leave, disability leave, compensatory time off, or any other paid leave, shall be deemed to be "time worked."

Prior period of employment shall be credited to the employee for purposes of determining vacation eligibility provided that during each such prior employment period, the employee achieved permanent status. An employee in an initial probationary status shall not be permitted to take a vacation even though such employee may, upon satisfactory completion of the initial probationary period be entitled to additional vacation pursuant to the above.

25.7 Vacation Relief Personnel. The City agrees to increase the number of firefighter classification vacation relief personnel by two (2) from four (4) to six (6) from May 1 through October 31 of each calendar year.

25.8 Carry-over of Vacation Leave. An employee may carry over to the next subsequent cycle of twenty six (26) biweekly pay periods not more than two-hundred (200) hours for employees on a forty (40) hour workweek and two-hundred forty (240) hours for employees on a fifty six (56) hour workweek of unused vacation leave, together with any earned vacation which the employee is prevented from using in the former cycle, during which it is accrued, because of service-connected disability or extended sick leave with or without compensation. This carryover process shall expire at the end of payroll calendar year 2008.

Effective the first payperiod of payroll calendar year 2009, employees shall not be allowed to accrue vacation in excess of two times their annual vacation accrual rate. Once the maximum accumulation has occurred, vacation will cease to accrue until the employee's vacation balance has fallen under their maximum vacation accrual amount.

Effective the first payperiod of payroll calendar year 2009, any employee who is already above two times their annual vacation accrual rate, will cease accruing vacation until they have used enough vacation to bring them below their maximum accrual amount.

25.9 Vacation Scheduling. Any employee who is prevented from taking regularly scheduled vacation as a result of disability leave or sick leave, shall take vacation as follows:

1. If the employee returns from disability leave or such leave in the last three (3) months of the calendar year, or, if the missed vacation occurs in the last three (3) months of the calendar year, then the employee will be given the option of carrying over the missed vacation hours to the next calendar year or taking such vacation under the conditions set forth below.
2. If the employee returns from such leave during the first nine (9) months of the calendar year, then the employee shall be required to reschedule the missed vacation during the remainder of such calendar year. Such rescheduling shall occur on any shift selected by the employee, even a shift on which the maximum allowable number of employees in the same classification have already scheduled vacation; provided, the employee rescheduling missed vacation shall not be permitted to select a shift if the employee's selection would cause the total number of employees in the classification to exceed the maximum allowable number by more than one (1) employee.
3. Re-selection of missed vacation shall be permitted on a first-come, first-served basis.
4. For personnel assigned to a non-suppression work function, their selection of vacation is subject to approval by the Bureau Director and may be denied for reasons of excessive workload.

25.10 Effective the first payperiod of payroll calendar year 2009, employees will only be allowed to use vacation that has already been accrued.

## **ARTICLE 26 SICK LEAVE**

26.1 Each full-time employee shall be entitled to sick leave with pay in accordance with the following provisions:

26.1.1 Sick leave shall accrue in an amount equal to the number of hours worked, excluding overtime, multiplied by a factor of 0.04688 for employees assigned to twenty-four (24) hour shifts, or a factor of 0.04616 for other eligible employees. Only paid leave for holidays, vacation, disability, compensatory time off, or other paid leave shall be considered as time worked for purposes of this section.

26.1.2 Accrued sick leave may be utilized if the employee is required to be absent from work on account of non-job related, illness or injury; routine medical or dental appointments; illness in the immediate family as defined herein, or absence of an eligible female employee due to illness, injury or disability related to pregnancy or childbirth. Immediate family shall be limited to the eligible

employee's mother, father, spouse, domestic partner registered with the Human Resources Department, child, stepfather, stepmother, or stepchild.

Up to forty-eight (48) hours of accrued sick leave per calendar year may be utilized if the employee is required to be absent for the care related to the illness or injury of the employee's grandchild, brother, sister, father-in-law or mother-in-law.

- 26.1.3 Accrued sick leave may also be utilized for job-related illness or injury if the employee is medically required to be absent from work between the date an examining physician determines the employee's condition to be "permanent and stationary" and the date the employee is so notified. Such accrued sick leave may not be utilized if the employee is otherwise entitled to temporary disability leave compensation for the above-referenced period of time. Accrued sick leave not to exceed three (3) working days may be granted at the discretion of the Director of Human Resources or designated representative, following the notification referred to above. Telephone notice or a notice mailed to the employee's last known address of record shall be determined notice to the employee.
- 26.1.4 Accrued sick leave not to exceed three (3) working days may be granted in circumstances where an alleged job-related illness or injury is involved, but the employee fails to provide medical verification of such job-related illness or injury.
- 26.1.5 Anything in this Article to the contrary notwithstanding, an employee who, pursuant to the provisions of Article 27 of this Agreement, has been receiving temporary disability leave compensation and who has received the maximum allowable amount of such compensation pursuant to Article 27, and who is entitled to Workers' Compensation temporary disability benefits, other than the Workers' Compensation temporary disability benefits provided by Division I of the Labor Code of the State of California, shall be permitted to utilize accrued sick leave subject to the following restrictions: Sick leave shall be utilized in one-half (1/2) hour increments, but in no event shall an employee receive an amount, including any Workers' Compensation temporary disability compensation, in excess of such employee's regular base pay.
- 26.1.6 Except as otherwise provided by resolution of the City Council, paid sick leave shall not be allowed for any absence from work occasioned by intoxication, chronic alcoholism or use of narcotics not prescribed by a licensed physician.
- 26.1.7 No employee shall be entitled to or be granted sick leave, either with or without pay, unless the employee, or someone on their behalf, notifies the employee's immediate superior or department head of their intent to take such sick leave, and of the reasons therefore, as soon as possible but not less than one (1) hour prior to the commencement of the employee's scheduled work day. However, the City Manager may waive the requirements of such notice upon presentation of a reasonable excuse of such employee.
- 26.1.8 An employee may be required to furnish substantiation for any absence for which sick leave payment is requested.

26.1.9 A full-time employee of the City shall be entitled to sick leave without any pay if required to be absent from work on account of any non-job related illness, injury or disability, including absences of female employees related to pregnancy or childbirth, or on account of routine medical or dental appointment needs of the employee, in all situations where such employee is not entitled to sick leave with pay. No single period of sick leave without pay shall exceed twelve (12) months in any twenty-four (24) month period, and any full-time employee who is unable to return to work after being absent therefrom for twelve (12) months in any twenty- four (24) month period on unpaid sick leave shall be considered to have voluntarily resigned.

26.2 Sick Leave Payoff. There shall be paid to each full-time employee of the City:

26.2.1 Who qualifies for retirement and retires from the service of the City under and pursuant to the provisions of any applicable retirement plan of the City except Chapter 3.28 of Title III, of the San José Municipal Code, other than a full-time employee who retires or becomes eligible for retirement allowances pursuant to the provisions of Section 3.24.510, Section 3.32.370, or Section 3.36.1630 of the San José Municipal Code; or

26.2.2 Who qualifies for retirement and retires from the service of the City under and pursuant to the provisions of Chapter 3.28 of Title III of the San José Municipal Code, and who, at the time of such retirement, is credited with at least fifteen (15) years or twenty (20) years of service, whichever is applicable, in said retirement plan; or

26.2.3 Whose service with the City is terminated, and who, subsequent to such termination of service, qualifies for retirement and retires pursuant to the provisions of said Section 3.24.510, Section 3.32.370 or Section 3.36.1630, of the San José Municipal Code, and who, at the time of such retirement, is credited with at least fifteen (15) or twenty (20) years of service in the applicable retirement plan; or

26.2.4 To the estate of any full-time employee who had terminated service with the City but had retained rights in a retirement system according to provisions in the SJMC, and dies (on or after July 10, 1977) prior to becoming as cited under provisions of the SJMC, and has at the time of death credit for at least twenty (20) years of service in the applicable retirement plan.

26.2.5 To the estate of any full-time employee of the City of San José who dies prior to such retirement, even though the employee is not credited with at least fifteen (15) or twenty (20) years of service in any applicable retirement plan, as additional compensation for not having used all or some of their accumulated sick leave with pay, such compensation as shall equal the greatest of the following:

- (a) If such full-time employee, at the time of retirement or death, shall have accumulated and has to their credit less than four-hundred (400) hours, or five-hundred sixty (560) hours for any full-time employee who is assigned to twenty four (24) hour shifts, of earned unused sick leave, the employee

or their estate, shall be paid a sum of money equal to fifty percent (50%) of the employee's hourly rate of pay at the time of death, retirement, or termination, whichever is earlier, multiplied by the total number of the employee's accumulated and unused hours of sick leave as of the date of death or retirement;

- (b) If such full-time employee, at the time of retirement or death, shall have accumulated and has to their credit, at least four-hundred (400) hours, or five-hundred sixty (560) hours for any full-time employee who is assigned to twenty-four (24) hour shifts, but less than eight-hundred (800) hours, or one-thousand one-hundred twenty (1,120) hours for any full-time employee who is assigned to twenty-four (24) hour shifts, of earned unused sick leave, the employee or their estate, shall be paid a sum of money equal to sixty percent (60%) of the employee's hourly rate of pay at the time of death, retirement or termination, whichever is earlier, multiplied by the total number of the employee's accumulated and unused hours of sick leave as of the date of death or retirement;
- (c) If such full-time employee, at the time of retirement or death, shall have accumulated and has to their credit at least eight-hundred (800) hours, or one-thousand one-hundred twenty (1,120) hours for any full-time employee who is assigned to twenty-four (24) hour shifts, but less than one-thousand two-hundred one (1,201) hours, or one-thousand six-hundred eighty (1,680) for any full-time employee who is assigned to twenty-four (24) hours shifts, of earned unused sick leave, the employee or their estate, shall be paid a sum of money equal to eighty percent (80%) of the employee's hourly rate of pay at the time of death, retirement or termination, whichever is earlier, multiplied by the total number of the employee's accumulated and unused hours of sick leave as of the date of death or retirement;
- (d) If a full-time employee, at the time of service retirement or death, has accumulated and has to their credit at least one-thousand two-hundred one (1,201) hours, or one-thousand six-hundred eighty (1,680) hours for any full-time employee who is assigned to twenty-four (24) hour shifts, or greater of earned unused sick leave, the employee or their estate, shall be paid a sum of money equal to one-hundred percent (100%) of the employee's hourly rate of pay at the time of death or service, whichever is earlier, multiplied by the total number of accumulated and unused hours of sick leave as of the date of death or retirement. If after retirement the employee switches from service to disability retirement, the employee shall repay to the City the difference in sick leave payout between service and disability retirement (e.g. one-hundred percent (100%) service, eighty percent (80%) disability).

26.2.6 For purposes of payment of accumulated sick leave as provided in this Article, sick leave accumulated during prior periods of employment shall be credited to the employee. Such previously accumulated sick leave shall be credited to the employee for use during such employee's current employment.

26.2.7 For purposes of the sick leave payoff benefit, service with the Central Fire District will be counted as years of service for the City for former employees of the Central Fire District who transferred to the City under the consolidation.

## **ARTICLE 27 DISABILITY LEAVE**

- 27.1 Subject to the terms, conditions, limitations and other provisions contained in this Article, a full-time employee of the City who is required to be absent from active service for the City as the result of injury arising out of and in the course of their full-time employment with the City, shall be deemed to be on disability leave of absence from active City service from the time the employee is required, because of such injury to be absent from active City service, to the time the employee is no longer required by such injury to be absent from such active service or until their employment with the City ends or is terminated, whichever is the earlier time, and, in such situation, such full-time City employee shall be entitled to receive, and shall be paid, in lieu of the employee's regular salary, and in addition to such temporary disability compensation as they may be entitled to under the Workers' Compensation provisions of Division I or Division 4 of the Labor Code of the State of California, such temporary disability leave compensation, if any, as the employee may be entitled to under the following provisions of this Article for the periods of time hereinafter specified in this Article.
- 27.2 Anything elsewhere to the contrary notwithstanding, no full-time employee of the City who is required to be absent from active service for the City as a result of any injury shall be deemed to be on disability leave of absence, or be entitled to any compensation or other benefits under the provisions of this Article unless such employee, as a result and because of such injury and absence from active City service, is entitled to temporary disability compensation from the City under and by virtue of the Workers' Compensation provisions of Division I or Division 4 of the Labor Code of the State of California.
- 27.3 If the Workers' Compensation Appeals Board of the State of California, or any judicial court having jurisdiction over the matter, should determine that such employee is not entitled to temporary disability compensation from the City under said provisions of said Labor Code, said employee shall not be entitled to any benefits under the provisions of this Article, and any moneys theretofore paid to the employee under the provisions of this Article shall be deemed to have been paid in error, and the City shall be entitled to recover the same.
- 27.4 An employee of the City shall not be deemed to be on disability leave of absence and shall not be entitled to any compensation or other benefits under the provisions of this Article if the injury as a result of which the employee is required to be absent from active City service results from any work voluntarily undertaken by such employee which they had been prohibited from engaging in prior to the date of such injury by an examining physician of the City.
- 27.5 An employee of the City shall not be deemed to be on disability leave of absence and shall not be entitled to any compensation or other benefits under the provisions of this Article for any period of absence from active City service if the employee is offered alternative employment during such period of absence in a class of employment identical or substantially similar to that in which the employee worked immediately prior to the

time the employee was required to be absent, and if, in addition, such employee was physically qualified for such alternative employment and refused or failed to accept such employment.

- 27.6 In no event shall any compensation or other benefits be payable under the provisions of this Article to any employee, because of absence resulting from an injury, for any period of time greater than the shortest of any of the following periods of time, to wit: (i) the time during which the employee is required to be absent from active City service as a result of injury arising out of and in the course of their full-time employment with the City, (ii) the period of time for which temporary disability compensation is payable to the employee under the Workers' Compensation provisions of Division I or Division 4 of the Labor Code of the State of California, (iii) one (1) year. Also, no employee shall be entitled to any benefits or compensation under the provisions of this Article because of absence resulting from an injury for any time after the expiration of five (5) years immediately following the date of such injury.
- 27.7 Unless and except to the extent otherwise expressly provided in this Article, an employee who becomes entitled, because of disability, to any leave of absence, compensation or other benefits under the provisions of this Article, shall not be entitled to any salary, leave of absence or other compensation under the provisions of any other Section or Sections of this Article, or under the provisions of Chapter 3.12 of Title III of the San José Municipal Code, or under the provisions of any other ordinance or resolution, for or because of the employee's injury or absence from active service, the leave, compensation and benefits provided by this Article for disability of such employee, being in lieu of, and not in addition to, salary, leaves of absence, or other compensation or benefits to which the employee might otherwise become eligible under the provisions of any other Section of this Article, or under the provisions of Chapter 3.12 of Title III of the San José Municipal Code.
- 27.8 Subject to the terms, conditions, limitations and other provisions contained in this Article, a full-time employee of the City on disability leave of absence shall be entitled to the following temporary disability leave compensation, to wit:
- 27.8.1 For the first three-hundred sixty five (365) days of the employee's disability leave of absence, or for such portion of such three-hundred sixty five (365) days as the employee may be absent on such leave where the employee is absent for less than the full term of such three-hundred sixty five (365) days, the employee shall be entitled to an amount of money which when added to the temporary disability compensation paid or payable to the employee for such period of time under the Workers' Compensation provisions of Division I or Division 4 of the Labor Code of the State of California, will equal one-hundred percent (100%) of what would have been the employee's regular salary for such period if the employee was in active service rather than on disability leave of absence.
- 27.8.2 For any period of disability leave of absence following the expiration of the above-mentioned periods of time, the employee shall be entitled to no compensation whatsoever.

- 27.9 No employee shall be entitled to any compensation or other benefits under the provisions of this Article unless the Director of Finance shall have determined that such employee is entitled to such compensation or benefits.
- 27.9.1 The Director of Finance in order to properly make any determination respecting an employee's claim to benefits hereunder, may require the employee to present evidence proving that such employee is entitled to the benefits claimed, including, but not limited to, proof of the injury, proof that it arose out of and in the course of the employee's employment with the City, proof of the disability and of its duration, and proof of any other relevant matters. Also, said Director may require the employee to submit to medical and physical examinations by physicians selected by said Director.
- 27.9.2 The Director of Finance shall be notified of approved or disapproved claims for disability leave compensation.
- 27.9.3 The Director of Finance shall not make any determination holding that an employee is entitled to any compensation or leave of absence hereunder for any period of time because of an injury if the Workers' Compensation Appeals Board, or any judicial court having jurisdiction over the matter, shall have already determined that such employee is not entitled because of such injury to any temporary disability compensation whatsoever from the City, or to any such compensation from the City for said period of time, under the Workers' Compensation provisions of Division I or Division 4 of the Labor Code of the State of California. Any such determination by said Director in violation of this paragraph shall be null and void.
- 27.9.4 Also, in the event the Director of Finance should determine that an employee is entitled to any compensation or leave of absence hereunder for any period of time because of an injury, and, subsequently, the Workers' Compensation Appeals Board, or any judicial court having jurisdiction over the matter, should determine that the employee is not entitled, because of such injury, to any temporary disability compensation whatsoever from the City, or to any such compensation from the City for such period of time, under the Workers' Compensation provisions of Division I or Division 4 of said Labor Code, then in that event, the determination of said Director shall become null and void and City shall be entitled to reimbursement for all moneys, if any, theretofore, paid by the City to said employee for or because of said injury and absence.
- 27.9.5 For personnel on work-related disability, all communications to the employee's physician shall be coordinated through either the Risk Manager's claim representative or the City's physician.

## **ARTICLE 28 RETIREMENT**

- 28.1 Benefits of the Police and Fire Retirement Plan System are to be paid in accordance with the provisions of the Plan and the Memorandum of Agreement on Retirement Between the City and the Union and the San José Police Officers' Association.

- 28.2 No staff services from the City Attorney's Office will be charged to the Police and Fire Retirement Fund.
- 28.3 For purposes of computing retirement benefits for employees covered by this Agreement, and in accordance with the provisions of Chapter 3.36 of the San José Municipal Code, the term "compensation," "final compensation" or "final average salary" as such terms are used to determine retirement benefits shall be defined to include any EMT compensation and holiday pay.
- 28.4 The City shall provide, at no cost to the employees or the Union, an annual pre-retirement advisory program covering benefits and rights of retired employees. The program shall include retiree tax information, workers' compensation and rehabilitation benefits and available alternatives to retirement.
- 28.5 Permanent employees represented by the IAFF who transfer to Police service shall remain in the Police and Fire Retirement plan while they are in the Police Academy.
- 28.6 The current formula for calculating retirement benefits is 2 ½% percent of the final compensation for each year of service with the City up to 20 years, plus 3% of final compensation for each year of service with the City between 21 and 25 years, and 4% from 26-30 years subject to a maximum of 85%.
- Effective July 1, 2008, the benefit formula will be changed to 3% of final compensation for each year of service once an employee completes twenty (20) years of service to a maximum of 90%.
- 28.7 Effective July 1, 2008, the spousal survivorship benefit shall be equal to fifty percent (50%) of the member benefit up to a maximum of forty-five percent (45%) of the member's final average salary.
- 28.8 Effective as soon as practicable after the Retirement Board's actuary determines that there is no impact to the City or the Police and Fire Department Retirement Plan and following adoption of the implementing ordinance, the following employee paid plan changes will be in effect for all employees represented by the organization;
1. Elimination of the thirty (30)-day window for the redeposit of withdrawn contributions, allowing for redeposit at anytime for active employees. Total impact to the plan (including any individual actuarial analysis) will be paid by affected employee.
  2. Elimination of the thirty (30)-day window for the purchase of service credit for previous Federated Retirement service credit, allowing for purchase at any time for active employees. Total impact to the plan (including any individual actuarial analysis) will be paid by affected employee.
  3. The ability to purchase service credit for time on unpaid leave of absence. Total impact to the plan (including any individual actuarial analysis) will be paid by affected employee.

## ARTICLE 29 MISCELLANEOUS

- 29.1 Pay Checks. Paychecks will be delivered on payday to the station to which an employee is normally assigned. Any paycheck not claimed by an employee before Monday, ten (10) days following payday, will be returned to the Fire Department Administration Office. Employees may, at their option, file with the Finance Department appropriate written instructions for the automatic deposit of their paychecks, which instructions may be amended at such times as the Finance Director determines are reasonable.
- 29.2 Door Locks. Doors on all firehouses shall be fitted with locks and the City shall make every reasonable effort to maintain the locks in proper operating order. Apparatus doors may be closed and locked by employees responding to an alarm.
- 29.3 Voter Registration and Bicycle Licensing. Voter registration shall be restricted to the hours between 9:00 a.m. and 7:00 p.m. Bicycle licensing shall be restricted to the hours between 9:00 a.m. and 7:00 p.m. on Saturdays and Sundays.
- 29.4 Television Training. In each station where the employees' television set is used to view televised training programs sponsored by the Department, the City shall lease one (1) descrambler from the current cable provider and provide it for use on that set. The purpose of this descrambler is to facilitate transmission of training programs and the City is under no obligation to guarantee or pay any fee for other services, which may be available to users of the descrambler. Additionally, the City agrees to pay one-half (1/2) of the cost of maintenance for television sets used for such training purposes, provided, however, that the City will pay no more than \$100.00 per fiscal year for any single station. If the employees of a station purchase a new television set and that set is to be used for training purposes, any unused portion of the \$100.00 maximum station expenditure may be applied toward the purchase of that set, with the understanding that no additional funds will be available to that station for maintenance or purchase for the remainder of the fiscal year.
- 29.5 Copies of Agreement for Distribution. The City will print five-hundred (500) hard copies for use by the City and IAFF, Local 230.

## ARTICLE 30 MAINTENANCE OF MEMBERSHIP

- 30.1 Except as otherwise provided herein, each employee who, on March 1, 2004, is a member in good standing of the Union shall thereafter, as a condition of employment, maintain such membership for the duration of this Agreement, to the extent of paying the periodic dues uniformly required by the Union as a condition of retaining membership.
- 30.2 Any employee who, on March 1, 2004, is not a member of the Union nor any person who becomes an employee after March 1, 2004, shall not be required to become a member as a condition of employment. Any such employee who thereafter becomes a member of the organization shall thereafter maintain such membership for the duration of the Agreement except as otherwise provided herein.
- 30.3 Any employee who, on March 1, 2004, was a member of the Union, and any employee who subsequently becomes a member may, during the period beginning May 1, 2008

through May 31, 2008; and May 1, 2009 through May 31, 2009 resign such membership and thereafter shall not be required to join as a condition of employment. Resignations shall be in writing addressed to the City's Municipal Employee Relations Officer with a copy to the Union.

- 30.4 The Union shall indemnify the City and hold it harmless against any and all suits, claims, demands and liabilities that may arise out of or by reason of the application of or implementation of the provisions of this Article.

## **ARTICLE 31 BEREAVEMENT LEAVE**

- 31.1 Each full-time employee shall be granted bereavement leave with full pay for a period of four (4) days in the case of employees on other than twenty four (24) hour shifts or two (2) work shifts, for personnel assigned to work twenty four (24) hour shifts, to attend the customary obligations arising from the death of any of the following relatives of such employee or employee's spouse or employee's domestic partner. All leave must be used within fourteen (14) calendar days following the death of the eligible person. Under extreme circumstances, the fourteen (14) -day requirement may be waived by the Director of Employee Relations. The decision of the Director of Employee Relations regarding the waivers shall be final with no process for further appeal:

- a) Parent/Step Parents
- b) Spouse
- c) Child/Step-Child
- d) Brother/Sister/Step-Brother/Step-Sister/Half-Brother/Half-Sister
- e) Grandparents/Step-Grandparents
- f) Great Grandparents/Step-Great Grandparents
- g) Grandchildren
- h) Domestic Partner
- i) Sister in-law/Brother in-law/Daughter in-law/Son in-law

31.1.1 A domestic partner, as referenced in Section 33.1, must be the domestic partner registered with the Department of Human Resources.

- 31.2 Anything hereinabove to the contrary notwithstanding, no such employee shall be granted bereavement leave in the event of the death of any of the above relatives, if such employee is not scheduled to work when such bereavement leave is required.

## **ARTICLE 32 AUTHORIZED REPRESENTATIVES**

- 32.1 For purposes of administering the terms and provisions of the various ordinances, resolutions, rules and regulations adopted pursuant to this Memorandum of Agreement:

32.1.1 Management's principal authorized agent shall be the Municipal Employee Relations Officer, or a duly authorized representative except where a particular Management representative is otherwise designated.

- 34.2.1 The Union's principal authorized agent shall be the President of International Association of Firefighters, Local #230, or a duly authorized representative.

## **ARTICLE 33 MINIMUM STAFFING**

- 33.1 The parties agree that such staffing shall be accomplished pursuant to the Minimum Staffing procedures set forth in the OAG. It is further agreed that such procedures will be revised by the parties in order to equalize minimum staffing opportunities consistent with this Agreement.
- 33.2 The City agrees to provide the following staffing levels at all times:
- 33.2.1 Each single piece Engine Company and the HIT team shall have a minimum of four (4) line personnel.
  - 33.2.2 Each Engine Company with a hose wagon shall have a minimum of five (5) line personnel.
  - 33.2.3 Each three (3) piece Engine company shall have a minimum of six (6) line personnel.
  - 33.2.4 Each Truck Company or Urban Search and Rescue vehicle shall have a minimum of five (5) line personnel.
  - 33.2.5 Each Battalion shall have a minimum of one (1) battalion chief or person acting in this capacity per shift.
  - 33.2.6 At the discretion of the Fire Chief or designee, and notwithstanding the above provisions, the following vacancies need not be filled:
    - 33.2.6.1 A total of ten (10) employees, absent for twelve (12) hours or less, for reasons related to duties or training within their scope of work, however, no more than two (2) employees may be absent from the same battalion at one time.
    - 33.2.6.2 In addition to section 33.2.6.1, a total of three (3) employees, absent for twelve (12) hours or less, who are Executive Board members or designees, for union business.
    - 33.2.6.3 In addition to sections 33.2.6.1 and 33.2.6.2 no more than one (1) employee may be absent from the same battalion at one time for the following employee initiated absences if less than four and one-half (4.5) hours in duration: medical/dental appointments, family illness, and prescribed therapy; compensatory time off, or vacation. Vacation and compensatory time off shall be provided, if approved, on a first-come first-served basis, in the event of a tie, seniority shall be the determining factor.

33.2.6.4 Paramedics may only be absent from their assigned company for the vacancies identified in Subsections 33.2.6.1, 33.2.6.2 and 33.2.6.3 if an accredited paramedic (a support paramedic, minimum staffer or shift trader) is available and the Advanced Life Support of the company is maintained.

33.2.7 The department will attempt to pre-staff five (5) designated holidays (Thanksgiving, Christmas Eve, Christmas Day, New Years Eve, and New Years Day), two (2) weeks in advance by offering the option to work either half shifts or the entire shift by using a Holiday pre-staffing procedure. Any additional vacancies shall be filled by regular minimum staffing and voluntary mandatory procedures.

33.3 If an employee is contacted for pre-staffing and refuses the assignment, a minimum staffing position will not be reserved for that employee.

33.4 Any provisions of Article 14 of this Agreement to the contrary notwithstanding, it is understood that compensation for hours of work performed as a part of implementing the staffing levels referenced above will be paid, in addition to wages earned at the appropriate rate.

## **ARTICLE 34 RETURN TO WORK**

34.1 An employee who returns to work following a work-related disability, sick leave or unpaid medical leave shall follow the return to work procedures outlined in the City of San José Official Action Guide.

34.2 An employee who returns to work following a work-related disability, sick leave, or unpaid medical leave must take the following steps:

34.2.1 When returning from work-related disability:

34.2.1.1 Employee provides information on ability to return to work from their treating physician to the Risk Management Section of the Finance Department. If they are cleared by their physician for full duty, they return to the line.

34.2.1.2 If, after the employee is cleared to return to the line, the Department questions the determination of the employee's treating physician, the Department contacts the City Physician and requests that the City Physician determines the need for further evaluation.

34.2.1.3 The City Physician makes the determination whether the employee stays on full duty, is assigned to modified duty, or is placed on disability leave status until the results are received.

34.2.1.4 The City Physician receives the results of the Functional Capacity Examination and determines whether the employee should stay on full

duty, be assigned modified duty, or be placed on disability leave status. The City Physician notifies both the Fire Department and the Employee.

34.2.1 When returning from sick or unpaid medical leave after three (3) days or two (2) shifts:

34.2.2.1 Employee provides information on ability to return to work from their physician to the City Physician.

34.2.2.2 If questions on fitness for duty result from the medical information or an examination, the employee is scheduled for a Functional Capacity Examination, or similar examination. The Department may contact the City Physician and express concern with the fitness for duty of an employee previously on medical leave.

34.2.2.3 While awaiting results from the Functional Capacity Examination, the City Physician makes the determination whether the employee stays on full duty, is assigned to modified duty, or is placed on sick leave until the results are received.

34.2.2.4 The City Physician receives the results of the Functional Capacity Examination and determines whether the employee should stay on full duty, be assigned to modified duty, or be placed on sick leave status. The City Physician notifies both the Fire Department and the employee.

## **ARTICLE 35 EMPLOYEE RIGHTS**

35.1 It is the mutual desire of the City and the Union to protect the rights of the employees. Accordingly, whenever any employee is questioned or interrogated by management concerning any matter which could lead to discipline, the employee may request that a Union representative be present during the questioning or interrogation session. In the event the employee exercises such right, no questioning or interrogation shall proceed until such time as a Union representative is made available to attend such session, provided such representation is made available within a reasonable period of time not to exceed five (5) days.

35.2 When the City finds it necessary to conduct an internal investigation, the investigation will be conducted according to the procedures set forth in the Department's Official Action Guide (OAG) and in accordance with any other rights otherwise granted by law applicable to the employee being investigated. Individuals will be trained in these procedures and the applicable legal rights of employees.

35.3 Any dispute regarding the application of the OAG procedures in the conduct of an investigation may be appealed in accordance with the grievance procedure.

35.4 An employee suspected of criminal misconduct may be ordered to answer questions, notwithstanding the employee's constitutional rights, upon penalty of discipline, provided the employee is advised that such answers may not be used in any criminal proceedings against the employee.

- 35.5 The implementation of this article will neither diminish nor enhance rights granted under Government Code 3300, if any exist. For purposes of this provision, Arson Investigators are deemed to be peace officers.

## **ARTICLE 36 RECRUIT CLASSIFICATION**

All applicants who meet the requirements for the classification of Firefighter and who are selected for possible appointment to the classification of Firefighter shall first be classified as a Firefighter Recruit while in attendance and training at the Fire Academy. A Firefighter Recruit shall be a non-sworn employee unless and until the employee completes the Fire Academy training and is graduated from the Fire Academy. Upon completion of such training and graduation from the Academy, a Firefighter Recruit will be eligible to be appointed to the classification of Firefighter. While they are in the class, provisions of this Agreement unique to Firefighters and Disability Leave Supplement shall not apply to Firefighter Recruits. They shall be treated by the City as a civilian employee for these purposes.

Firefighter Recruits shall be awarded a step increase of approximately five percent (5%) upon being sworn in as a Firefighter. Their next step increases shall be due on their first, second, third, fourth, fifth and sixth anniversary dates of being appointed to the classification of Firefighter.

## **ARTICLE 37 LABOR MANAGEMENT COMMITTEE**

- 37.1 Department Labor Management Committee. There shall be a Department Labor Management Committee consisting of three (3) representatives of the Department at the level of Bureau Director and above, and three (3) members of the Association. The Fire Chief, or designee, shall sit as one of the Department representatives and any of the six (6) members may be replaced with a alternate from time to time. The City Employee Relations Officer shall be requested to attend Labor/Management meetings and shall be provided an agenda in advance. The Employee Relations Officer shall sit at these meetings and attempt to resolve concerns to mutual satisfaction.

The Labor Management Committee shall meet no less than quarterly and shall consider and discuss matters of mutual concern pertaining to the improvement of the Department and the welfare of its employees. Accordingly, the Labor Management Committee will not discuss grievances properly the subject of the procedural process except to the extent that such discussion may be useful in suggesting improved department policies. Either the Association representatives or the Department representatives may initiate discussion of any subject of a general nature affecting the operation of the Department or its employees.

An agenda describing the issue(s) to be discussed shall be prepared by the initiating party and distributed at least three (3) days in advance of each meeting, and minutes shall be kept and maintained.

All persons representing both parties sit as equals with the Employee Relations Officer sitting as the facilitator. Nothing in this section shall be construed to limit, restrict or reduce the management prerogatives outlined elsewhere in this agreement.

- 37.2 Wellness Program Labor Management Committee. During the term of this contract the Department will convene a labor management committee to develop a proposal based upon the IAFF/IAFC Wellness Fitness Initiative. The proposal will be submitted to the City and the Union for approval by both parties. The parties agree that all members of Local 230 shall be required to participate in any implemented wellness fitness initiative program as a condition of employment.
- 37.3 Labor Management Committee on Deferred Retirement Option Plan ("DROP"). During the term of this contract the City and the Union will, not later than 1/31/2008, convene a labor management committee to explore available options and implications of adopting a Deferred Retirement Option Plan (DROP). The Labor Management Committee shall be comprised of a maximum of three (3) members of City Administration and a maximum of three (3) designated Union representatives.

The Union or City may also suggest, recommend and/or allow an outside party to make presentations in the Labor Management Committee to provide relevant information. The cost, if any, associated with such outside parties will be borne by the party(s) requesting their presence.

Meetings of the Committee shall be informational only and shall not constitute or be construed as negotiations or meeting and conferring. In the event either party wishes to meet and confer over the establishment of a DROP, they may do so during negotiations over a successor Memorandum of Agreement.

## **ARTICLE 38 PROMOTIONAL EXAMINATIONS**

- 38.1 Authority. The City retains the full and unrestricted right to establish, control and determine the promotional selection process and perform any managerial function not specifically limited by this Article. The promotional testing process shall be under the direction and authority of the Human Resources Director or designee.
- 38.2 Probation. The probationary period for employees appointed to the rank of Fire Engineer and above may be extended only when the probationary employee has been on disability leave, light duty, sick leave, leave for purposes related to pregnancy, military leave, or unpaid leave of absence during the probationary period and that such extension shall be equivalent to the length of time the employee was on leave and/or light duty.
- 38.3 Scheduling.
- 38.3.1 Each promotional examination will normally be held within one-hundred twenty (120) days of the date of expiration of the eligibility list for a classification, or within one-hundred twenty (120) days of the date of exhaustion of such eligibility list, should such exhaustion occur prior to the regular expiration date. The City shall notify the Union in the event of a timeline extension, and the reasons for such extension.
- 38.3.2 If, after the final application filing date, there is a change in test time, date, and/or location, the City will make a reasonable effort to notify each candidate of

the change and if not successful in contacting each candidate provide a written notice of such change to each fire station. If a change occurs within seventy two (72) hours of the scheduled test time, date, and/or location a written notice will also be posted at the original location.

- 38.4 Completion Timeline. Examinations shall be completed within ninety (90) days from the date of the first examination of the examination process to the publication of the list unless extended by the City due to circumstances beyond the City's control.
- 38.5 Announcements. Examination announcements shall be provided to the Department for distribution to the Union and in appropriate work locations at least thirty (30) calendar days prior to the first scheduled test date.
- 38.6 Information on Weights.
- 38.6.1 The examination announcement shall contain the weights of each examination phase and will also indicate the job dimensions to be tested in the exam.
- 38.6.2 If a multiple choice examination is used in the promotional process, each multiple choice question shall be weighted equally.
- 38.6.3 If a multiple choice examination is used, prior to commencement of the next examination phase, any actions taken on challenged multiple choice items shall be provided to each candidate and the Union.
- 38.6.4 On the final day of the oral phase of the examination process, and prior to scoring the test, the City shall provide the union with the list of dimensions and weights evaluated in the oral phase.
- 38.7 Examination Weights. The weight of dimensions of a promotional examination shall be based on a current job analysis in accordance with either the Uniform Guidelines on Employee Selection Procedures or other professionally recognized employee selection guidelines as identified by the City.
- 38.8 Job Analysis. Upon request, a copy of the job analysis shall be made available for review by the Union.
- 38.9 Reading Lists. The Department will publish a recommended list of core reading materials for all ranks that will be updated periodically. The Department will provide a written copy of the reading list for the written examination at least one hundred twenty (120) calendar days prior to the examination. The reading list shall include the source materials and subject matter areas to be used for development of the written examination. It is the responsibility of each candidate to study from correct textbooks and literature editions.
- 38.10 Subject Matter Experts. The City will select, when possible, subject matter experts with diverse experiences. When possible, subject matter experts shall reflect diversity in terms of years and experience in the Department, different shifts and assignments, and reflect the range of tasks under consideration. Upon request by Union, the City shall provide the Union with the number of subject matter experts, ranks held, and range of

years of experience, within fourteen (14) calendar days after the last phase of the examination is administered.

- 38.11 Raters. In the event multiple raters are used to evaluate candidates, each rater will observe and score each candidate during some portion of the examination unless it is determined there may be a conflict of interest between a rater and particular candidate, or in an extenuating circumstance beyond the City's control. If possible, candidates will be assigned in a random fashion.

38.11.1 Raters selected to evaluate candidates shall receive training as arranged by the Human Resources Department.

38.11.2 Raters shall be provided the list of dimensions and weights evaluated prior to the oral examination phase.

38.11.3 It shall be the obligation of both a rater and a candidate to bring to the attention of the Human Resources Director, or designee, as soon as possible the identity of the rater or candidate posing a possible conflict of interest due to any knowledge of the individual. The Human Resources Director, or designee, shall determine whether or not such knowledge and possible conflict of interest shall constitute grounds for excusing the rater from rating the candidate.

38.11.4 The City shall make a reasonable effort to obtain raters from comparable fire departments for those portions of the examination involving emergency scene management questions or tactical exercises.

- 38.12 Conduct of Examination. Candidates shall be required to complete a confidentiality agreement which precludes candidates from sharing test information until all candidates have completed the examination phase. Candidates violating this provision shall be disqualified from the examination process and may be subject to disciplinary action.

38.12.1 The arithmetical pass point of any promotional examination shall be given to the Union upon request.

38.12.2 Every effort will be made to ensure examination questions reflect San José Fire Department and City policies and procedures.

38.12.3 Candidates must achieve a passing score on all phases of the testing process to achieve placement on the eligible list.

38.12.4 The passing point established for any component of the testing process shall be in accordance with either the Uniform Guidelines on Employee Selection Procedures or other professionally recognized employee selection guidelines as identified by the City.

38.12.5 Upon request, the City will provide to the Union pertinent information regarding the setting of pass points.

- 38.13 Scoring. Within thirty (30) calendar days of the establishment of an eligible list and upon written request by the Union to the Director of Human Resources, the Director, or

designee shall meet and review with the Union the accuracy of the mechanical scoring of the written examination. All affected candidates shall be notified of any error which results in a change of score and/or placement on the eligible list.

38.14 Records Retention. At a minimum the City shall provide for the preservation of raters' score sheets and notes during the duration of the eligible list or litigation, if any.

38.15 Observers. The Union may elect to designate an observer(s), who is not a current or former employee of the City, for each examination phase, as applicable.

38.15.1 Observer(s) may be present in all phases of the examination including training of the raters; the examination process, except in the case of simultaneous exercises where the observer(s) can physically watch only one (1) exercise without being disruptive; and scoring sessions with the raters. The Union will arrange for the presence of its selected observer(s), including payment. The City shall not be required to compensate the Union observer(s) in any way. The schedule for the examination will not be affected by the ability or inability of the observer to be present, and/or failure of the Union to provide observers shall not constitute a basis for invalidation of the examination.

38.15.2 Observer(s) shall be provided the list of dimensions and weights evaluated prior to the oral examination phase during the training provided they participate in the training. To protect the confidentiality of the examination process any information provided to observer(s) shall be treated as confidential material, any breach of confidentiality shall result in the observer(s) immediate removal from the process.

38.15.3 The observer shall report to the City and Union irregularities in the examination process, if any, which appear to discriminate on the basis of race, color, religion, sex, national origin, ancestry, physical or mental disability, age, sexual orientation, marital status, medical condition (cancer related, AIDS and HIV) or other non-merit factors.

38.15.4 To report irregularities, the observer first reports perceived irregularities to the examination administrator designated by the City by the conclusion of the examination phase in which the alleged irregularity occurs. If that concern continues, the observer shall promptly report the concern to the Director of Human Resources and the Union President. If the observer only notes a pattern of discrimination, then the observer may report the irregularity at the end of the examination phase in which such pattern of discrimination has been noticed. The observer shall only be concerned with or report on the process and administration of the examination and not on the contents of an examination.

38.15.5 If no irregularity is presented by the end of an examination phase, the observer may not raise an issue solely related to that examination phase at any later time with respect to discrimination.

38.15.6 With respect to an oral examination in which there are exercises being carried out simultaneously among different examinees, and if the observer cannot

watch more than one (1) such exercise without disrupting it, then the observer will watch one (1) such exercise at a time.

38.15.7 The observer shall not talk, disrupt, provide clues to any candidate or rater during the examination process, interrupt proceedings in progress or otherwise disturb the examination process. The observer shall at all times protect the confidentiality of the examination content and candidates' performance except with regard to reports to the parties as provided for in this Section.

38.15.8 The observer at the conclusion of the examination process will make a report concerning the examination, and any recommendations the observer may have, jointly to the City and the Union.

38.16 Position Status. Upon request, the Department will provide a list to the Union identifying the number of filled and unfilled positions in each promotional rank.

38.17 Career Development. The Fire Chief or designee will meet with promotional candidates upon request to discuss career development concerns.

38.18 Appeal Process. Existing portions of the City's Civil Service Rules which directly pertain to the specific items enumerated above shall be superseded by this Article. All other provisions of Civil Service Rules and the City Charter pertaining to Civil Service promotional examinations shall remain in effect and are expressly incorporated herein. Any disputes regarding this Article or applicable Civil Service Rules shall be resolved through the grievance procedure except for claims challenging test questions which shall be resolved through the Civil Service process.

## **ARTICLE 39 USE OF TOBACCO**

Employees shall not use any type of tobacco product within the station structures or any other Fire Department buildings, or in any city owned vehicles, apparatus or equipment.

## **ARTICLE 40 SUBSTANCE ABUSE POLICY**

The City Substance Abuse Program & Policy is incorporated herein by this reference (Exhibit VI - City Policy Manual Section 1.4.2, Substance Abuse Policy) and made a part of this Agreement, subject to the following:

1. All drug testing will include a split sample and be performed by SAMSA certified labs.

## **ARTICLE 41 EMPLOYEE ASSISTANCE PROGRAM**

41.1 A training plan for utilization and implementation of Employee Assistance Programs shall be developed jointly between the City of San José and IAFF Local 230.

41.2 Effective each July, the City will provide an additional sum of \$15,000 for training related to Firefighter Employee Assistance Programs.

- 41.3 Psychological Counseling: The City agrees to provide a psychological counseling program with the maintenance of doctor-patient relationship and with an alcoholic counseling component.

## **ARTICLE 42 CIVILIANIZATION OF FUNCTIONS**

The City has the discretion to civilianize the positions listed below. Sworn incumbents may be transferred as other positions in the same classification become vacant or the City may delay implementation. If sworn incumbents are to be transferred, they will receive a minimum notice of ninety (90) calendar days. The City will give due consideration to the disabilities of employees occupying such positions and will make a reasonable effort to accommodate such disabilities, including the granting of reemployment rights in different job classifications under existing City programs that provide for maintaining pre-existing salary levels. At the City's sole discretion, civilianized positions may be filled temporarily by sworn personnel without the City waiving its right to civilianize such positions.

- 42.1 Fire Prevention - One Battalion Chief.

## **ARTICLE 43 MODIFIED DUTY**

Personnel on disability or sick leave shall be placed on modified light duty assignments within the Fire Department upon request provided the employee's physician and/or medical consultant and the City's physician mutually approve and provided further that such modified light duty assignment is available and that the employee is qualified to perform the assignment.

## **ARTICLE 44 SEPARABILITY**

Notwithstanding any other provisions of this Agreement to the contrary, in the event that any article, or subsections thereof, of this Agreement shall be declared invalid by any court of competent jurisdiction, or by any applicable State or Federal law or regulation, or should a decision by any court of competent jurisdiction or any applicable State or Federal law or regulation diminish the benefits provided by this Agreement, or impose additional obligations on the City, the parties shall meet and confer or negotiate on the Article or subsections thereof affected. If they are unable to come to an agreement on the matter, the provisions of Section 1111 of the Charter shall apply. All other provisions of this Agreement not affected shall continue in full force and effect.

## **ARTICLE 45 NONDISCRIMINATION**

- 45.1 Parties agree that they and each of them shall not discriminate against any employee or Organization member on account of race, color, creed, religion, sex and sexual orientation, national origin, ancestry, age, marital status, physical or mental disability, familial status, or political affiliation. An employee seeking to utilize the grievance procedure, claiming a violation of the subparagraph, shall make an election of remedies between the grievance procedure and any other remedy available at law, through local, State or Federal law, including but not limited to Title VII of the Civil Rights Act of 1964.

No employee shall be allowed to pursue the grievance procedure claiming a violation of this subparagraph if that employee cites the same underlying facts in pursuing any other remedy available at law, through local, State or Federal law, including but not limited to Title VII of the Civil Rights Act of 1964, and if no adverse finding has been rendered in pursuit of such remedy.

When an employee seeks to use the grievance procedure claiming a violation of this subparagraph, the City, the Organization and the employee shall enter into a complete settlement agreement to voluntarily settle the dispute through the grievance procedure, the employee agrees to waive the employee's right to pursue any other remedy otherwise available through local, State or Federal law, including but not limited to Title VII of the Civil Rights Act of 1964. Such settlement agreement shall contain a provision that the employee has been advised of the employee's right to consult an attorney and/or a local, State or Federal anti-discrimination agency regarding the employee's discrimination claim and that the employee's consent to the settlement agreement is voluntary and knowing.

- 45.2 The parties agree that they and each of them shall not discriminate against any employee or Organization member because of membership or lack of membership in the Organization, or because of any authorized activity on behalf of the Organization.

#### **ARTICLE 46 CATASTROPHIC ILLNESS TIME DONATION**

- 46.1 Employees may donate accrued vacation and/or compensatory time for credit to another employee who suffers a non-job related catastrophic injury or illness. Such donations may be made in accordance with the following:

46.1.1 To be eligible to receive donated leave, the recipient employee's illness must require that the employee be absent for at least thirty (30) cumulative days within the six (6) previous months. In addition, the recipient employee must have exhausted all paid leave prior to using donated leave.

46.1.2 Donations of vacation and/or compensatory time shall be made in increments of full or half hours.

46.1.3 Donations shall be on a dollar for dollar basis. The value of donated leave time shall be calculated at the donor's regular pay rate, then converted to hours of sick leave at the recipient's regular pay rate to the nearest half hour to determine the number of hours of sick leave available to the recipient. For employees covered by the City's salary continuation insurance plan, use of donated leave will be an offset to benefits in accordance with the provisions of that plan.

46.1.4 Donations are irrevocable. Unused hours remaining when the recipient returns to work or terminates employment with the City shall be retained by the recipient.

46.1.5 In the event of a death of the recipient while still employed by the City, any donated unused leave time remaining at the time of death will be paid to the recipients estate at one-hundred percent (100%) of the value at the employee's final hourly rate.

## **ARTICLE 47 MEET AND CONFER PROCESS AND MEDIATION**

47.1 The meet and confer process between the City and the International Association of Firefighters, Local 230 shall be conducted in accordance with the following procedures:

47.1.1 Meet and Confer. The goal of the meet and confer process is to reach a voluntary settlement which adequately addresses the interests of both parties. The parties shall be committed to conducting the process in good faith, treating all participants with respect and honoring each others' time by providing advance notice of scheduled and canceled meeting dates.

47.1.2 Mediation. In the event impasse is declared regarding contract negotiations for a new MOA, the parties will participate in mediation prior to arbitration in an attempt to resolve the dispute. However, the parties shall arrange for an arbitrator and schedule arbitration dates in advance (arbitration shall be conducted in accordance with City Charter section 1111). If the mediation process has not been completed within a 90-day period, beginning with the first day of impasse as determined by written notification of impasse by either party, either party may proceed to arbitration. If the parties do not proceed to arbitration, the arbitration shall be canceled.

47.1.3 If the parties remain at impasse following mediation, the bargaining unit may choose to make a presentation during a public City Council meeting without the requirement of a Council response.

## **ARTICLE 48 PARAMEDICS**

48.1 No more than 40 percent of the total available support paramedics shall be assigned to any one shift. If the support paramedics must be balanced between shifts, it will be accomplished pursuant to the Routine Operations Policy and Procedures Manual (ROPP).

This agreement executed on the \_\_\_\_ **day of** \_\_\_\_\_, **2008**, between the City of San José and the International Association of Firefighters, Local 230, in WITNESS thereof, the appropriate representative of the parties have affixed their signature thereto.

FOR THE CITY OF SAN JOSÉ:

FOR THE INTERNATIONAL  
ASSOCIATION OF FIREFIGHTERS,  
LOCAL 230:

---

Debra Figone  
City Manager

---

Randy Sekany  
President

---

Alex Gurza  
Director of Employee Relations

---

Jeff Welch  
Vice President

---

Aracely Rodriguez  
Senior Executive Analyst

---

Robert Sapien, Jr.  
Vice President

---

Mark Skeen  
Executive Vice President

---

Keith Keesling  
Treasurer

---

Juan Diaz  
Secretary

---

Christopher Platten  
Local 230 Legal Counsel

**EXHIBIT "I"**  
**2004-2009 IAFF SALARY SCHEDULE**  
**Effective July 3, 2005**  
**(BI-WEEKLY RATES BASED ON A 40-HOUR WORKWEEK)**

CLASS								
NO.	CLASSIFICATION	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6	STEP 7
2310	Fire Recruit	2,318.40	Flat	Flat	Flat	Flat	Flat	Flat
2311	Fire Fighter	2,435.20	2,556.80	2,684.80	2,819.20	2,960.00	3,108.00	3,264.00
2312	Fire Engineer	2,989.60	3,138.40	3,295.20	3,460.80	3,634.40		
2313	Fire Captain	3,442.40	3,614.40	3,795.20	3,985.60	4,183.20		
2314	Battalion Chief	4,308.00	4,523.20	4,749.60	4,987.20	5,237.60		
2326	Fire Prevention Inspector	3,138.40	3,295.20	3,460.80	3,634.40	3,816.80		
2328	Arson Investigator	3,278.40	3,442.40	3,614.40	3,795.20	3,985.60		
3332	Assistant Fire Master Mechanic	3,442.40	3,614.40	3,795.20	3,985.60	4,183.20		
3333	Fire Master Mechanic	3,849.60	4,041.60	4,244.00	4,456.00	4,680.00		

**EXHIBIT "II"**  
**2004-2009 IAFF SALARY SCHEDULE**  
**Effective July 2, 2006**  
**(BI-WEEKLY RATES BASED ON A 40-HOUR WORKWEEK)**

CLASS								
NO.	CLASSIFICATION	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6	STEP 7
2310	Fire Recruit	2,450.40	Flat	Flat	Flat	Flat	Flat	Flat
2311	Fire Fighter	2,574.40	2,702.40	2,837.60	2,980.00	3,128.80	3,284.80	3,450.40
2312	Fire Engineer	3,160.00	3,317.60	3,483.20	3,658.40	3,841.60		
2313	Fire Captain	3,638.40	3,820.80	4,011.20	4,212.80	4,421.60		
2314	Battalion Chief	4,553.60	4,780.80	5,020.00	5,271.20	5,536.00		
2326	Fire Prevention Inspector	3,317.60	3,483.20	3,658.40	3,841.60	4,034.40		
2328	Arson Investigator	3,465.60	3,638.40	3,820.80	4,011.20	4,212.80		
3332	Assistant Fire Master Mechanic	3,638.40	3,820.80	4,011.20	4,212.80	4,421.60		
3333	Fire Master Mechanic	4,068.80	4,272.00	4,485.60	4,709.60	4,948.00		

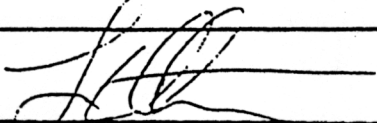
**EXHIBIT "III"**  
**2004-2009 IAFF SALARY SCHEDULE**  
**Effective July 1, 2007**  
**(BI-WEEKLY RATES BASED ON A 40-HOUR WORKWEEK)**

CLASS								
NO.	CLASSIFICATION	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6	STEP 7
2310	Fire Recruit	2,590.40	Flat	Flat	Flat	Flat	Flat	Flat
2311	Fire Fighter	2,720.80	2,856.80	2,999.20	3,149.60	3,307.20	3,472.00	3,647.20
2312	Fire Engineer	3,340.00	3,506.40	3,681.60	3,867.20	4,060.80		
2313	Fire Captain	3,845.60	4,038.40	4,240.00	4,452.80	4,673.60		
2314	Battalion Chief	4,812.80	5,053.60	5,306.40	5,572.00	5,851.20		
2326	Fire Prevention Inspector	3,506.40	3,681.60	3,867.20	4,060.80	4,264.00		
2328	Arson Investigator	3,663.20	3,845.60	4,038.40	4,240.00	4,452.80		
3332	Assistant Fire Master Mechanic	3,845.60	4,038.40	4,240.00	4,452.80	4,673.60		
3333	Fire Master Mechanic	4,300.80	4,515.20	4,741.60	4,978.40	5,230.40		

**EXHIBIT "IV"**  
**2004-2009 IAFF SALARY SCHEDULE**  
**Effective June 29, 2008**  
**(BI-WEEKLY RATES BASED ON A 40-HOUR WORKWEEK)**

CLASS								
NO.	CLASSIFICATION	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6	STEP 7
2310	Fire Recruit	2,683.20	Flat	Flat	Flat	Flat	Flat	Flat
2311	Fire Fighter	2,818.40	2,959.20	3,107.20	3,262.40	3,425.60	3,596.80	3,778.40
2312	Fire Engineer	3,460.00	3632.00	3,813.60	4,006.40	4,206.40		
2313	Fire Captain	3,984.00	4,183.20	4,392.00	4,612.80	4,841.60		
2314	Battalion Chief	4,985.60	5,235.20	5,496.80	5,772.00	6,061.60		
2326	Fire Prevention Inspector	3,632.00	3,813.60	4,006.40	4,206.40	4,416.80		
2328	Arson Investigator	3,794.40	3,984.00	4,183.20	4,392.00	4,612.80		
3332	Assistant Fire Master Mechanic	3,984.00	4,183.20	4,392.00	4,612.80	4,841.60		
3333	Fire Master Mechanic	4,455.20	4,677.60	4,912.00	5,156.80	5,418.40		

PERSONNEL ADMINISTRATIVE MANUAL  
City of San Jose

Subject: GENERAL EDUCATION REIMBURSEMENT	Page 1 of 5	Section Number 8.01
APPROVED: 	Effective Date 07/11/76	Revised Date 07/01/88

8.01.1 PURPOSE

- a. To encourage City employees to further their outside academic professional, and technical education through financial assistance for those courses that enhance career development with the City of San Jose.
- b. To set forth the conditions and procedures necessary to obtain reimbursement for approved educational expenses.

8.01.2 POLICY

a. COURSE SELECTION

1. The course work must relate to the employee's present position, must be beneficial to the employee's professional development, or must enhance the employee's career development with the City of San Jose, such as:
  - a. Improving the employee's skills or knowledge as required by his/her present position;
  - b. Preparing the employee for significant technological changes occurring in the career field;
  - c. Preparing the employee for changes in duties due to different assignments of a position or class;
  - d. Preparing the employee for the assumption of new and different duties as a result of a promotional appointment; or
  - e. Preparing the employee for promotional opportunities within the City of San Jose based on a logical educational plan of accomplishment.
2. Courses must be taken for regular academic units of credit from an accredited junior college, college or university.

PERSONNEL ADMINISTRATIVE MANUAL  
City of San Jose

Subject: GENERAL EDUCATION REIMBURSEMENT	Page	Section Number
	2 of 5	8.01
	Effective Date	Revised Date
	07/11/76	07/01/88

POLICY (continued)

For employees in Units 3, 5, 7, and 50, courses can also be taken: (reference Section 15.01 for listing of bargaining/representation units)

- a. For continuing education units (CEU's) from an accredited junior college, college or university
- b. From the San Jose Unified School District Metropolitan Adult Education Program (MAEP).

**h. ELIGIBILITY**

1. All employees who have completed six consecutive months of full-time service are eligible to apply.
2. Approval must be obtained prior to registration.
3. Course attendance will be on the employee's own time. City time is not authorized for outside education covered by this program. However, the department head will make an effort to adjust work schedules when courses are only offered during regularly scheduled work hours.

**c. REIMBURSEMENT**

1. Reimbursement of 75% of the cost of registration, tuition and required textbooks will be obtained from the Director of Finance upon satisfactory completion of the course.
2. Unless otherwise stated in the applicable Memorandum of Agreement, or if the employee is unrepresented, reimbursement is limited to a maximum amount of \$300 dollars per fiscal year for any one employee. Exception: The amount paid to any employee represented by Unit 50 shall not exceed six hundred dollars(\$600) in any fiscal year, provided however, that no more than three hundred dollars (\$300) may be applied to continuing education units and/or adult education classes. Educational assistance funds received from another agency or source must be reported. In no event shall reimbursement received from this program, plus reimbursement from other educational incentive programs, exceed the total cost of registration, tuition, and required textbooks. If the total amount of reimbursement from the City and other sources exceeds the total amount of approved expenses, the amount to be reimbursed by the City shall be reduced accordingly.

PERSONNEL ADMINISTRATIVE MANUAL  
City of San Jose

Subject: GENERAL EDUCATION REIMBURSEMENT	Page	Section Number
	3 of 5	8.01
	Effective Date	Revised Date
	07/11/76	07/01/88

3. An employee must receive a letter grade of "C" or better in the class unless the course is given only for units of credit on a pass/fail basis. If a course is given on a pass/fail basis, an employee must receive a "pass."

4. Reimbursement is authorized only for courses involving actual class time course work.

For employees in Units 5, 7 and 50 attending San Jose Unified Metropolitan Adult Education courses, evidence of satisfactory attendance is required for reimbursement.

5. External degree programs in which credit is awarded for life or work experience are ineligible for reimbursement.
6. A maximum of nine units will be allowed for thesis and required project class seminar.

#### 8.01.3 SCOPE

This policy and procedure for general education reimbursement applies to City employees who are participating in undergraduate and graduate studies.

#### 8.01.4 AUTHORITY and APPROVAL

- a. The application for general education reimbursement must be recommended for approval by the employee's department head and approved by the Director of Personnel before beginning any course work. In recommending approval, the employee's department head must verify the relationship between the requested course work and the employee's current or reasonably anticipated assignments with the City of San Jose.
- b. The employee must present to his/her department head, proof of satisfactory completion of the course in order to obtain reimbursement. This documentation may be retained in the employee's personnel file.
- c. Administration of this policy shall be the responsibility of the Director of Personnel.
- d. All Requests for Education Reimbursement and the amounts reimbursable are subject to funds budgeted for Education Reimbursement. Thus, maximum benefits under this policy may be reduced if the funds available become too low to insure equitable participation for all employees.

PERSONNEL ADMINISTRATIVE MANUAL  
City of San Jose

Subject: GENERAL EDUCATION REIMBURSEMENT	Page	Section Number
	4 of 5	8.01
	Effective Date	Revised Date
	07/11/76	07/01/88

8.01.5 PROCEDURE

<u>RESPONSIBILITY</u>	<u>ACTION</u>
Employee	1. Complete in duplicate, Section I of the Request for Education Reimbursement, Form 110-35.  2. Sign application, attach course description, and submit to department head for approval.
Department Head	3. Determine relationship between course work and employee's current position or promotional opportunities with the City. If approved, sign and forward to Director of Personnel.  4. If disapproved, return to employee with explanation.
Director of Personnel	5. Review application:  a. Verify employment data and course eligibility during the fiscal year shown on application. Complete Section III.  b. If approved, return both copies to department head for subsequent processing of reimbursement voucher. If disapproved, return both copies to department head with reason noted.  c. Record disposition of request.
Department Head	6. File approved application pending satisfactory completion of course.

PERSONNEL ADMINISTRATIVE MANUAL  
City of San Jose

Subject: GENERAL EDUCATION REIMBURSEMENT	Page	Section Number
	5 of 5	8.01
	Effective Date	Revised Date
	07/11/76	07/01/88

RESPONSIBILITY

ACTION

Employee

7. Submit transcript or grade slip, instructor's course outline or equivalent, listing of required textbooks and receipt(s) for the cost to department head.

For employees in Units 5, 7 and 50 who are taking San Jose Unified Metropolitan Adult Education Courses: Submit "pass" slip, instructor's course outline or equivalent, listing of required textbooks and receipt(s) for the cost to the department head.

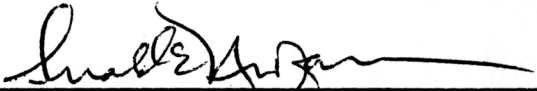
Department Head

8. Complete Section IV and prepare voucher for 75% reimbursement of applicable expenses; attach original approved application and documentation of satisfactory completion (transcript, grade slip, or "pass" slip) and receipt(s) for the cost. Process voucher according to normal voucher procedure.

Director of Personnel

9. Upon request, file updated record of educational accomplishments in employee's personnel file.

PERSONNEL ADMINISTRATIVE MANUAL  
City of San Jose

Subject: SPECIAL PROFESSIONAL AND EDUCATIONAL INCENTIVES	Page 1 of 4	Section Number 8.06
APPROVED: 	Effective Date 06/13/79	Revised Date 09/04/85

8.06.1 PURPOSE

To establish a policy and procedure for the payment of specified professional and educational incentives to employees in certain classifications. To identify classifications, licenses and activities for which payment under this section is approved.

8.06.2 POLICY

The policy of the City is to provide incentives to City employees who are incumbents in certain specified classifications to participate in approved professional or educational activities that relate to their jobs. The professional and educational activities and the eligible employees that are covered under this policy are described below:

A. REQUIRED LICENSES AND MEMBERSHIPS

Dues and/or fees that are necessary to maintain licenses or memberships that are required by the minimum qualifications of certain specified classifications are covered. For those employees in Unit 4 (Engineers and Architects), the payment of dues or fees pertains to those required in their professional service. Drivers licenses and similar licenses, not required for professional development, are excluded from this provision.

B. PROFESSIONAL MEMBERSHIPS FOR MANAGEMENT

In addition to the incentive cited above, personnel in Units 04, 21 and 99 are eligible for dues or memberships to be paid for one additional job-related organization.

NOTE: Payment for membership in the additional job-related organization is contingent upon approval of the employee's department head.

C. FIREFIGHTERS EDUCATIONAL INCENTIVE REIMBURSEMENT

Employees represented by the International Association of Firefighters Local #873 (Unit 02) are eligible for an educational incentive in the form of a bonus plan that is supplemental to the General Education Reimbursement Program.

PERSONNEL ADMINISTRATIVE MANUAL  
City of San Jose

Subject: SPECIAL PROFESSIONAL AND EDUCATIONAL INCENTIVES	Page	Section Number
	2 of 4	8.06
	Effective Date	Revised Date
	06/13/79	09/04/85

FIREFIGHTERS EDUCATIONAL INCENTIVE REIMBURSEMENT (continued)

The bonus plan shall consist of a payment of \$20 per semester unit, (quarter units to be computed at two-thirds value of semester units), not to exceed \$120 per fiscal year, for each firefighter who successfully complies with the conditions and procedures that are described under 8.06.4 of this section.

8.06.3 PAYMENT PROCEDURE:

REQUIRED LICENCES, MEMBERSHIP DUES AND PROFESSIONAL MEMBERSHIPS FOR  
MANAGEMENT

RESPONSIBILITY	ACTION
Employee	1. Prepare membership form or other request for membership or fees. Include any necessary back-up. Submit to Department Head.
Department Head	2. Approve request. (If Department Head is not sure that the employee qualifies under this provision, check with Finance Department.)  3. If approved, forward to Departmental Accounts Payable section.
Departmental Accounts Payable	4. Prepare payment voucher and forward to Finance Department.

NOTE: Payment requests for membership in an organization which is not required but is job-related must be accompanied by an explanation of the organization's job-relatedness in addition to other required documentation. Payment for membership in the additional job-related organization is contingent upon approval of the employee's department head.

PERSONNEL ADMINISTRATIVE MANUAL  
City of San Jose

Subject: SPECIAL PROFESSIONAL AND EDUCATIONAL INCENTIVES	Page	Section Number
	3 of 4	8.06
	Effective Date	Revised Date
	06/13/79	09/04/85

RESPONSIBILITY

ACTION

Finance Department

5. Verify eligibility of employee and adequacy of documentation.

6. Complete payment process.

8.06.4 FIREFIGHTERS UNIT 02

A. CONDITIONS FOR EDUCATIONAL INCENTIVE REIMBURSEMENT

Courses qualifying for this program will be approved in advance as a group by the City Manager, thus eliminating the need for approval on a course-by-course basis. The Training Officer in the Fire Department will maintain the approved list. In order to qualify for payment, the firefighter must obtain certification from the educational institution involved attesting to his/her successful completion of the course with an academic grade of "C" or better.

Payment will not be made for a repeat course unless the educational institution involved grants credit for the course with full knowledge that it has been repeated.

Occasionally a firefighter may attend a course, the title of which is not included on the list of approved courses but which would otherwise qualify for approval. In such a case, the official title, course description, and name of the educational institution must be submitted to the Training Section in the Personnel Department, who will determine the course's qualifications under this policy.

The bonus plan shall consist of a payment of \$20 per semester unit, (quarter units to be computed at two-thirds value of semester units), not to exceed \$120 per fiscal year, for each firefighter successfully complying with this policy.

B. RESPONSIBILITIES

The Fire Chief is responsible for:

1. Ensuring that personnel listed on the Special Payment Demand are fully qualified to receive the bonus.

PERSONNEL ADMINISTRATIVE MANUAL  
City of San Jose

Subject: SPECIAL PROFESSIONAL AND EDUCATIONAL INCENTIVES	Page	Section Number
	4 of 4	8.06
	Effective Date	Revised Date
	06/13/79	09/04/85

RESPONSIBILITIES (continued)

2. Checking listed courses and matching them with the list of courses which appear to qualify otherwise but which do not appear on the list.
3. Submitting a copy of each certificate of completion to the Director of Personnel for insertion in the applicable personnel files.
4. Maintaining for review by the City Auditor a clear record of bonuses requested and received.

C. PAYMENT PROCEDURE:

RESPONSIBILITY	ACTION
Employee	1. Present a copy of certificate of successful course completion or other adequate proof of successful course completion to the Fire Chief.
Fire Chief	2. Prepare a Special Payment Demand. Attach documentation verifying successful completion to Special Payment Demand and forward to Finance Department.
Finance Department	3. Process Special Payment Demand in accordance with established procedure.

## EXHIBIT VI

# Substance Abuse Program & Policy

1.4.2

## PURPOSE

It is the policy of the City of San José to maintain a safe, healthful and productive work environment for all employees. To that end the City will act to eliminate any substance abuse (alcohol, illegal drugs, prescription drugs or any other substance which could impair an employee's ability to safely and effectively perform the functions of the particular job), which increases the potential for accidents, absenteeism, substandard performance, poor employee morale or tends to undermine public confidence in the City's workforce.

This policy provides guidelines for self-referral and rehabilitation/treatment options for employees that may be experiencing a problem with alcohol and/or drug use and for-cause alcohol and/or drug testing for the detection and deterrence of alcohol and drug abuse. It also outlines the responsibilities of management and employees. All persons covered by this policy should be aware that violations of the policy may result in discipline, up to and including termination.

In recognition of the serious duty entrusted to employees of the City, with knowledge that drugs and alcohol do hinder a person's ability to perform duties safely and effectively, the following policy against drug and alcohol abuse is hereby adopted by the City of San José.

## APPLICATION

### A. Personnel

- a. Full-time and permanent, benefited part-time employees in the following units:
  - i. Unit 99
  - ii. Association of Engineers and Architects (AEA), IFPTE, Local 21
  - iii. City Association of Management Personnel (CAMP)
  - iv. Association of Maintenance Supervisory Personnel (AMSP)
  - v. International Association of Firefighters, Local 230 (IAFF)
  - vi. Association of Building, Mechanical and Electrical Inspectors (ABMEI)
  - vii. All Unrepresented employees
- b. Unbenefited employees are subject to all rules and responsibilities of this policy, exclusive of benefits provided by applicable MOA/Compensation Summary. Please see applicable MOA/Compensation Summary for information regarding benefits.

**FOR ALL OTHER BARGAINING UNITS, PLEASE SEE BACK OF MOA  
FOR APPLICABLE SUBSTANCE ABUSE POLICY.**

### B. Substances

- a. alcohol;
- b. illegal drugs; and
- c. prescription drugs and other substances which may impair an employee's ability to effectively perform the functions of the job.

## EXHIBIT VI

# Substance Abuse Program & Policy

1.4.2

## POLICY

It is the policy of the City that employees:

- shall not report to work under the influence of alcohol or drugs or exhibit symptoms of alcohol or drug use;
- while on duty shall not use, possess, sell or provide drugs or alcohol;
- shall not have the ability to work or be on paid stand-by when impaired as a result of the use of alcohol or drugs.

An employee is required to notify his/her supervisor when any medications or drug he/she is taking could create an unsafe and dangerous situation.

In the event there are questions regarding an employee's ability to safely and effectively perform assigned duties when using such medications or drugs, clearance from the City physician will be required. If an employee is prescribed medication or drugs in relation to a work-related injury or illness, the doctor treating the employee for the work-related injury or illness shall provide the required clearance.

The City has established an Employee Assistance Program (EAP) to assist those employees who voluntarily seek help for alcohol or drug problems. Employees could contact their supervisors or the Department of Human Resources for additional information.

Employees reasonably believed to be under the influence of alcohol or drugs shall be prevented from engaging in further work and shall be instructed to wait for a reasonable time until an authorized department representative can transport the employee from the worksite to home or an appropriate medical facility.

Violations of this policy should be grounds for disciplinary action, up to and including discharge for serious or repeated infractions. Refusal to submit immediately to an alcohol and/or drug analysis when requested by management will constitute insubordination, which alone will form a basis for discipline.

## RESPONSIBILITIES

### Employee Responsibilities:

- A. not report to work while his/her ability to perform job duties is impaired due to alcohol or drug use;
- B. not possess or use, or have the odor of alcohol or drugs on his/her breath during working hours while operating any City vehicle or equipment;
- C. not directly or through a third party sell or provide drugs or alcohol to any person or to any other employee while either employee or both employees are on duty, or paid stand-by;

## EXHIBIT VI

### Substance Abuse Program & Policy

### 1.4.2

- D. submit immediately to reasonable requests for alcohol and/or drugs analysis when requested by an authorized representative of a department head and if in a bargaining unit, may request Union representation;
- E. notify his/her supervisor, before operating City equipment, when taking any medications or drugs, prescription or non-prescription, which may create an unsafe or dangerous situation for the public or the employee's co-workers, including but not limited to valium, muscle relaxants, and painkillers, and
- F. provide within 24 hours of request a current valid prescription for any drug or medication identified when a drug screen/analysis is positive. The prescription must be in the employee's name.

#### **Management Responsibilities and Guidelines:**

- A. Managers and supervisors are responsible for consistent enforcement of this policy, i.e., that refusal constitutes insubordination that will result in disciplinary action. Any supervisor who knowingly permits a violation of this policy by employees under his/her direct supervision shall be subject to disciplinary action.
- B. A department head or authorized representative may request that an employee submit to a drug and/or alcohol analysis when a manager or supervisor has a reasonable suspicion that an employee is intoxicated or under the influence of drugs or alcohol. "Reasonable suspicion" is a belief based on objective and articulable facts sufficient to lead a reasonable prudent supervisor to suspect that an employee is under the influence of drugs or alcohol so that the employee's ability to perform the functions of the job is impaired or so that the employee's ability to perform his/her job safely is reduced.

For example, any of the following, alone or in combination, may constitute reasonable suspicion:

- 1. A pattern of documented abnormal or erratic behavior;
  - 2. Direct observation of drug or alcohol use; or information provided by a reliable and credible source that an employee has engaged in drug or alcohol use, the identity of which source shall be available to the employee and if employee is in a bargaining unit, the Union;
  - 3. Presence of the mental or physical symptoms of drug or alcohol use (e.g., glassy or bloodshot eyes, alcohol odor on breath, slurred speech, poor coordination and/or reflexes);
  - 4. A work related accident in conjunction with other facts which together support reasonable cause.
- C. Any manager or supervisor should immediately notify another supervisor to meet him/her to observe the employee's behavior prior to directing an employee to submit to a drug and/or alcohol analysis. If the employee is in a bargaining unit and requests Union representation, the employee will be allowed the opportunity to secure such representation. The process for

## EXHIBIT VI

### Substance Abuse Program & Policy

### 1.4.2

directing an employee to submit to a drug and/or alcohol test is outlined below (numbers 1 - 7).

Additionally, if an employee believes an employee not under his/her supervision has a problem and should be tested or referred, he/she should contact the **Office of Employee Relations** who will notify the department director. Should the department head concur that the employee appears to be in violation of the policy, the following procedure shall immediately be applied shall also apply:

1. The manager or supervisor shall document in writing the facts constituting reasonable suspicion that the employee in question is intoxicated or under the influence of drugs.
2. Any manager or supervisor requesting an employee to submit to a drug and/or alcohol analysis shall be responsible for the employee's transport to the City's designated Employee Medical Services or emergency room where a drug and/or alcohol test will be requested. If the incident occurs at other times when EHS is closed, contact:

Independent Toxicology Services  
Phone: (408) 244-0861  
After Hours: (408) 274-0696  
After Hours Alt 1: (408) 205-3071  
After Hours Alt 2: (408) 202-9582

They will arrange for the testing to occur at their office at 20 Harold Drive, Suite 32, San Jose. After using this service, please notify EHS at the first available opportunity. Independent Toxicology Services is staffed by certified technicians. All test results will be treated as confidential and returned to EHS.

3. Any manager or supervisor encountering an employee who refuses to submit to a drug and/or alcohol analysis upon direction shall remind the employee of the requirements and consequences of this policy. The manager or supervisor should ask the employee to wait a reasonable time until an authorized City representative can transport the employee home.
4. Managers and supervisors shall not physically search employees.
5. Managers and supervisors shall notify the Police Department when they have reasonable suspicion to believe that an employee may have illegal drugs in his or her possession.
6. Managers and supervisors shall not confiscate, without consent, prescription drugs or medications from an employee who has a prescription.
7. The employee will be informed of the requirement that he or she undergo testing in a confidential manner, by one of the supervisory employees who made the reasonable suspicion determination.

## EXHIBIT VI

### Substance Abuse Program & Policy

### 1.4.2

- D. A manager or supervisor may require an employee to attend an initial screening session with the Employee Assistance Program (EAP) as an alternative to drug or alcohol testing. The employee shall provide proof of attending the initial appointment. Failure to attend or to provide proof of such attendance may subject the employee to disciplinary action. Actual results of the initial screening shall be subject to disciplinary action. Actual results of the initial screening shall be subject to normal confidentiality provisions. The employee's decision to attend or not attend follow-up sessions shall be voluntary.
- E. Demands for drug or alcohol analysis by supervisors or managers, which are determined to be malicious or vexatious will not be tolerated and will subject the directing individual to disciplinary action.
- F. Results of Drug and/or Alcohol Analysis:
  - 1. Upon a negative result, the employee shall return to work if otherwise fit for duty. All records and documentation shall be purged.
  - 2. If the test result is positive, the following shall apply:

#### **First Offense:**

In an effort to encourage the employee to take responsibility for his/her problem, the first violation of this policy will result in a formal, mandatory referral to the **Employee Assistance Program (EAP)**, using the established referral procedures in addition to any disciplinary action the City may impose for violations of this policy. A written record of this referral will be maintained in a restricted confidential employee medical file. **EAP** will assess the employee's need for treatment. An employee declining to be evaluated by **EAP** may be subject to disciplinary action independent of any other misconduct.

Treatment will be offered to the employee on a voluntary basis and the employee will be responsible for thirty percent (30%) of the treatment cost. No disciplinary action will be imposed for refusal of treatment; however, misconduct including being under the influence of drugs and/or alcohol in the workplace and/or while on duty and/or while on standby or any action constituting a violation of this policy will continue to be subject to discipline, subject to applicable due process for City employees.

#### **Second Offense:**

During an employee's career, a second opportunity for treatment may be offered in the event of a relapse. Discipline, which could result in termination, will be imposed for the second violation of this policy, subject to due process for City employees. If a second treatment program is allowed, the employee will be responsible for the cost. The employee may request a split sample be tested at another facility at City expense to provide a second independent result.

## EXHIBIT VI

# Substance Abuse Program & Policy

1.4.2

### Confidentiality:

Laboratory reports or test results, if positive only, shall appear in an employee's confidential medical file. The reports or test results may be disclosed to a department head and Human Resources Director on a strictly need-to-know basis and to the tested employee upon request. Disclosures, without patient consent, may also occur when: (1) the information has been placed at issue in a formal dispute between the employer and employee, including employee discipline; (2) the information is to be used in administering this program; (3) the information is needed by medical personnel for the diagnosis or treatment of the patient who is unable to authorize disclosure.

### Procedure: Drug Testing

The City of San Jose Drug Testing Procedures contains procedures for handling testing for drugs if the test is conducted by Employee Medical Services during normal business hours. Tests required on nights or weekends will be handled in a medical facility determined by the City.

Presence of drugs in the employee's system will be reported as positive in the initial and confirmation test if the amount exceeds the minimum detection levels.

In addition to drug screening, alcohol level will be reported as positive if it is present at greater than or equal to 0.04g.

### Substance Abuse Treatment:

The City will make substance abuse treatment available to employees in the following way:

#### 1. Self Referral

- A. If an employee believes he or she has a substance abuse problem, he or she may make a confidential appointment with a counselor at **EAP**.
- B. The counselor will evaluate the case and determine the appropriate level and type of treatment, if any. The **EAP** will approve a plan and facility. These decisions will be made jointly with the individual seeking treatment.
- C. The counselor will notify the City by an employee code number that treatment and funding is authorized. Claims administration will be handled confidentially as are other health insurance claims.

#### 2. Formal Referrals

- A. If an employee's pattern of work behavior indicates a problem is potentially related to substance abuse, the supervisor may contact the **EAP** and define issues.

## EXHIBIT VI

City of San Jose

City Policy Manual

### Substance Abuse Program & Policy

1.4.2

- B. The employee will be advised to go to the **EAP** for evaluation. Any participation in treatment is voluntary.
- C. If the employee accepts treatment, the procedures for developing a plan and the payment of bills by the City are the same as for the person who self refers.

#### 3. Positive Drug Test

- A. The first time an employee tests positive on a drug test, the department head will contact the EAP and initiate a formal referral. An evaluation by the **EAP** is mandatory. Participation in treatment is voluntary.
- B. The employee will sign a release allowing the **EAP** to advise the City about whether the employee is participating in and cooperating with treatment. No information can be released about the problem or treatment.

#### 4. Settlement of a Proposed Discipline

- A. If an employee has received a Notice of Intended Discipline for misconduct or job performance, either on or off the job, which has a substance abuse component, the City may agree to waive the discipline, if the employee will agree to and successfully comply with a treatment program.
- B. The specific terms of the agreement are determined on a case-by-case basis, including requiring the employee to submit to follow-up random drug and/or alcohol testing for a specified period of time. The intent, however, is not to relieve the employee of responsibility for his/her actions. It is to encourage maximum access to rehabilitation.

#### 5. Funding

The employee will pay 30% of treatment costs for a plan approved by the **EAP** for the employee.

The City will pay the remainder of the cost, which is not covered by the employee's health insurance for one treatment.

Approved:

/s/ Alex Gurza  
Director of Employee Relations

1/08/08  
Date

## EXHIBIT VI

# Substance Abuse Program & Policy

1.4.2

## City of San José Substance Abuse Program

### SCOPE OF SERVICES

1. Provide gatekeeping and case management chemical dependency problems of employees. This service is to include assessment, referral to high quality treatment facilities, precertification, and post-treatment case management.
2. Provide orientation to the services provided via programs coordinated through the City Training Program.

### COMPONENTS

#### 1. Assessment

Covered employees may be self-referred to **Employee Assistant Program (EAP)** or referred by a supervisor from the City of San José. **EAP** will provide a clinical assessment for the most appropriate level of treatment. (see Tracks A, B, C). Treatment options include:

**Structured Inpatient Program:** Inpatient facilities are licensed by the California Department of Health Services under two ratings:

- CDRH: Chemical Dependency Recovery Hospital located in an acute-care hospital.
- CDRS: Chemical Dependency Recovery Service, which is a free-standing residential facility.

Inpatient treatment may be required when a client has a lengthy history of abuse, is in an advanced stage dependency, has significant associated medical problems, or has little family support. This program would include detoxification waiting period.

**Structured Outpatient Program:** Outpatient facilities are not currently licensed. This treatment may be appropriate when a client is in the early or middle stages of dependency, is not resistant to treatment, and has family support.

**Alcoholics Anonymous and Alanon:** When chemical dependency is in an early stage, intensive participation in AA or related affiliates in conjunction with supportive counseling at **EAP** may be appropriate. This approach has proven successful when a client is very strongly motivated to recover and has the support of the family.

#### 2. Referral

Criteria have been developed at **EAP** to assist counselors in making a referral to the most appropriate level of treatment. Counselors are required to document referrals based on this criteria. The Clinical Coordinator reviews all alcohol/drug cases referred to treatment to insure that the most cost effective recommendations are made. Referrals are made to quality programs to insure the best chance of success.

## EXHIBIT VI

# Substance Abuse Program & Policy

1.4.2

### 3. Pre-certification

Provide required pre-certification for coverage for all chemical dependency treatment. All covered employees requesting treatment should be directed to **EAP** prior to contacting a treatment facility. **EAP** will evaluate and refer the employee to a recommended facility and notify the City of San José of the referral for billing purposes. Should an emergency or a self admission be initiated, **EAP** will evaluate the employee within 48 hours and make a recommendation for continued treatment, and notify the City of San José Human Resources/Benefits Division. The section on Gatekeeping Procedures outlines the steps **EAP** will take in this process.

### 4. Case Management

**EAP** counselors will coordinate the chemical dependency treatment of employees from initiation of treatment for up to one year after treatment. This is a critical component of recovery because treatment programs have little investment in clients once they have left their program. Quality case management can reduce the high risk of relapse and assist employees who have relapsed to resume the recovery process. Case management involves the following activities on the part of **EAP**.

- Act as liaison with the treatment program team and City of San José to monitor progress and facilitate the return to work.
- Participate in the development of a recovery plan with the client, the family and the treatment team
- Continued counseling with client and family as necessary after discharge from treatment facility for one year.
- Should a relapse occur, provide crisis intervention and assistance in developing a stronger recovery plan to increase the involvement of employer, family, after-care team, etc.
- Provide relapse prevention education and therapy groups as appropriate.

### 5. Treatment Program

Treatment Program is considered to have the following components:

- Inpatient or outpatient treatment, or a combination of both
- Treatment aftercare program
- **EAP** case management for up to a year following treatment.

A treatment program is considered ended when all three of the above have been completed or when an employee terminates participation in any of the components.

## EXHIBIT VI

### Substance Abuse Program & Policy

1.4.2

Treatment will be covered if it is provided by one of **EAP's** recommended facilities. If these facilities are not used, coverage will be limited to that normally covered under the employee's medical benefits plan.

#### 6. Tracks

There are three sets of procedures (tracks) for initiating chemical dependency treatment:

##### **TRACK A: Assessment at EAP and Referral to Treatment facility**

- A. Client is assessed at **EAP** with a chemical dependency problem requiring treatment. If the counselor is clear that outpatient or inpatient is required, the client may be sent directly to the recommended treatment facility and Step B would be initiated.

If the counselor desires, the client may be sent for additional assessment at a treatment facility. An outpatient assessment counselor may be utilized in these cases, especially if the client falls in a "gray area" regarding type of necessary treatment.

- B. Counselor obtains a release of information to authorize report of participation to the City of San José Human Resources/Benefits Division.

- C. Treatment program is contacted by telephone to notify them that the client is coming and that:

1. Treatment is pre-authorized for a specific number of days and the authorization form is mailed to them.
2. The program should contact City of San José Human Resources/Benefits Division to confirm eligibility.

- D. Counselor fills out the pre-authorization form within one working day of admission and sends it to:

- a. Treatment facility
- b. City of San José Human Resources/Benefits Division
- c. Client (at home address)

- E. Counselor interaction with treatment program during treatment will be as follows:

- Outpatient: Telephone contact weekly for the duration of treatment. If necessary, schedule a meeting with the client and treatment counselor for post-treatment planning.
- Inpatient: Meet with staff during the first fifteen (15) days of authorized treatment to determine the subsequent treatment course. Ask them to justify inpatient treatment beyond the fifteen (15) authorized days. Generally speaking, we will want to follow the recommendations of the program.

## EXHIBIT VI

### Substance Abuse Program & Policy

1.4.2

- Keep in contact on a weekly basis via telephone or letter.
  - Attend discharge planning meeting at facility, and set-up first after-care appointment. Request that staff remind client to contact **EAP** therapist for appointment and that there are resources available to the employee via the Union, if employee is in a bargaining unit, or the **EAP**.
- F. Provide authorization for alterations or extension of treatment as necessary.
- G. Continue contact a minimum of once a month for the first six months. Monitor the client's progress and participation in aftercare. (**EAP** will verify that the facility has obtained a release of information from the client.) Identify indicators of potential relapse and refer to prevention group if appropriate. Make referrals for additional necessary services; i.e., family counseling, adult and child support groups, etc.
- H. The treatment program will be considered terminated when the client has successfully completed treatment, aftercare, and **EAP** case management, or:
- a. If the client fails to attend aftercare.
    - No more than 2 unexcused absences.
    - Reasons for non-attendance must be cleared through **EAP** therapist.
  - b. Failure to attend follow-up counseling with **EAP** as agreed upon with their counselor.
- I. Notify City of San José Human Resources/ Benefits Division and the client, in writing, when the "treatment program" is terminated or completed.

#### TRACK B: Emergency Admission to Treatment Facility

- A. Employee presents to a treatment facility. Facility calls City of San José Human Resources/Benefits Division to determine eligibility and coverage.
- B. City of San José Human Resources/Benefits Division will confirm eligibility and notify the facility that authorization is required through **EAP** beyond the initial 48-hour period of coverage.
- C. **EAP** will visit the treatment facility and assist the client within the 48 hours.
- D. If it is determined the client needs inpatient treatment, and
- the treatment facility is an **EAP** recommended facility, authorization will be given as outlined in Track A.
  - the treatment facility is not an **EAP** recommended facility, **EAP** will facilitate a transfer to a recommended facility.

## EXHIBIT VI

### Substance Abuse Program & Policy

1.4.2

- E. If outpatient treatment is recommended and client agrees with the treatment course, **EAP** will facilitate the referral and authorize as indicated in Track A.

#### TRACK C: Second Treatment

- A. Eligible employees who have relapsed following an initial treatment would not be authorized for a second treatment without assessment by **EAP**. The procedures would be the same as for Track A or Track B, and approval would be based on professional judgment.

#### RECOMMENDED TREATMENT PROGRAM

Programs are evaluated on the basis of:

- Skill and experience of the staff
- Intensity of treatment model
- Use of group and family therapy
- Inclusion of a strong education component
- Availability of a well-structured aftercare program
- Involvement of the family in all phases of the program

Referrals to specific programs are made on the basis of:

- 1) quality of program to meet the needs of the employee
- 2) location in relation to employee, and
- 3) cost.

**EAP** will assist in the negotiation of preferred provider rates at the City's request.

The City of San José will provide a head count of all covered employees to **EAP** each month. **EAP** will bill the City of San José each month the contracted rate per covered employee for all gatekeeping services. The City of San José will be responsible for the cost of all recommended treatment services for covered employees.